West Virginia Board of Public Works
November 1, 2012 – 10:30 a.m.
Treasurer's Conference Room
Minutes

Attendees:

Members

Agriculture Commissioner Gus R. Douglass
State Auditor Glen B. Gainer
Secretary of State Natalie E. Tennant
Attorney General Darrell V. McGraw, Jr.
State Superintendent of Schools Dr. Jorea Marple
Peter Markham for Governor Earl Ray Tomblin
Diana Stout for State Treasurer John D. Perdue

Guests:

Jeff Amburgey, Tax Department
Scott McNeil, Tax Department
Nancy Baire, Tax Department
Dawn Warfield, Attorney General's Office
Kathy Schultz, Attorney General's Office
Wayne Williams, Attorney General's Office
Scott Adkins, Attorney General's Office
Russ Rollyson, Auditor's Office
Alma Simpson, Dept. of Education
Sandy Marinacci, Dept. of Agriculture
Ashley Summitt, Secretary of State's Office
Michael Griffith, Jefferson Utilities
Scott Burgess, Jefferson Utilities
Kerry Carnahan, CSX Transportation
Mike Quinn, Norfolk Southern
Phil Kabler, WV Gazette

The West Virginia Board of Public Works met on Thursday, November 1, 2012 at 10:30 a.m. in the Treasurer's Conference Room, Building 1, Room EB54 of the State Capitol Complex. Due to the absence of Governor Earl Ray Tomblin, the meeting was called to order and chaired by Commissioner of Agriculture Gus R. Douglass.

(Attached is a transcript of the meeting.)

Natalie Tennant

Natalie E. Tennant,
Secretary of State
And Ex-Officio Secretary of the
Board of Public Works

STATE OF WEST VIRGINIA

BOARD OF PUBLIC WORKS

November 1, 2012

10:31 AM

WEST VIRGINIA STATE CAPITOL

Treasurer's Conference Room

Charleston, West Virginia

PENNY L. KERNS
Certified Court Reporter
and Notary Public

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BOARD MEMBERS:

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and Dawn Warfield

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Peter Markham, General Counsel
for Governor Earl Ray Tomblin

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P R O C E E D I N G S

COMMISSIONER DOUGLASS: Good morning everyone and welcome to this Board of Public Works meeting. This is a meeting that was recessed on October 1, but we will come back into official session.

I have made a listing of the Board of Public Works here and I find that we have the Treasurer represented by Diana Stout, his legal counsel; and the Governor is represented by Peter Markham. The Attorney General Darrell McGraw is here in person. Natalie Tennant is here in person. State Treasurer John Perdue again has Diana Stout as his legal counsel here representing him. Glen, I've got to get you in here somewhere, Auditor Gainer, on this list, and I'm Gus R. Douglass, Commissioner of Agriculture. Yes, I'd better get Education, Jorea, in here.

Since the Governor is not present, I will be acting as chairman of this meeting. The first item that I have on the agenda as I view it is the minutes from the October 1, 2012, meeting of the Board of Public Works. What is your pleasure?

AUDITOR GAINER: I move approval.

COMMISSIONER DOUGLASS: Second?

DR. MARPLE: Second.

COMMISSIONER DOUGLASS: Moved and seconded that the minutes be approved as presented. Discussion?

(No response.)

COMMISSIONER DOUGLASS: Hearing none, all those in favor signify by saying aye.

(Ayes responded.)

COMMISSIONER DOUGLASS: Opposed no.

(No response.)

COMMISSIONER DOUGLASS: The motion carries. The next item on our agenda is an update of the Tax Department Peer Review, and who is the representative? Jeff Amburgey, we'll hear your report.

MR. AMBURGEY: All right, Commissioner, Board members, I'm here on behalf of Tax Commissioner Craig Griffith. Prior to finalizing utility values last year the Board voted to have a peer review of the utility appraising processes here in West Virginia. I immediately considered that the most impartial and most professional group to do that review was the International Association of Assessing Officers, of which most states are members and would have peers that could come in and review that process.

We began contact with the IAAO and in May they presented the Tax Department with a scope of work. There was some discussion about some things to take in and things to take out, one being the Auditor's Office distributes the values to the counties and they had proposed studying that, but that was really not part of what we were intending to look at, just the appraisal process. So we made those changes and finally we got an official draft from the IAAO.

In July we shared that with the Board and sometime after that we sent the Board a memo seeing if we thought this, we could sole-source this contract out and at the next meeting, I believe it was in August, the Board discussed it, thought, agreed for the most part that the IAAO would be the best organization to do this, we'd have the peers that could look at the process, and there was also concern that others that might bid on the contract would have a conflict of interest in that they may have utility clients that would be interested in the outcome.

At that point in that August meeting the Board voted for us to proceed with the contract as a sole-source and we eventually got all the -- there was some complications in the contract about when the IAAO would get paid and things of that nature. We got all of that ironed out, and in October we got the contract to submit. We submitted it to Purchasing and I don't know a lot about purchasing, so I have our purchasing expert here with us, Nancy Baer, who will tell you where we stand.

MS. BAER: We have submitted it to Purchasing Division three different times as a sole-source, the 16th, the 23rd, and again yesterday, the 31st, and they will not let us send it up as a sole-source because they feel that there are other vendors that could do this, so they will not let us do it as a sole-source. I've even had contact with Glen's office, talked to some people there, and they will not approve it that way, so we're going to have to bid this out as an RFQ. So that's our next route. We'll type up the specs and send it out. Jeff and I are going to get together and we're going to work on the specs and try to get that submitted within the next week so that it can go out on the bulletin board, not the 5th, but the 12th hopefully. That's our plan. That's where we're at.

COMMISSIONER DOUGLASS: Are there questions of Jeff or Nancy?

MR. MARKHAM: What did we estimate the cost being, Jeff or Nancy?

MR. AMBURGEY: At the time, you know, we had hoped to be under 25,000. At the last time's meeting, I said I thought it would probably be under fifty, but Nancy tells me we can't really reveal what they submitted.

MS. BAER: It's at the Purchasing Division right now. Until we actually have it on the board and it's out for bid, we can't really discuss it.

COMMISSIONER DOUGLASS: Any other questions?

(No response.)

COMMISSIONER DOUGLASS: Hearing none, let the record indicate we have received this report. The purpose of this meeting is that we give those individuals an opportunity to make remarks in reference to the tentative assessments that have been presented to this Board by the Tax Department. My records indicate that we do have three individuals that have requested an opportunity to appear before this Board at this meeting. The order I find them on my minutes and my agenda is Jefferson Utilities is first, Norfolk Southern Railroad Company, and CSX Transportation. Do we have representatives here present from Jefferson Utilities?

MR. GRIFFITH: Yes sir.

COMMISSIONER DOUGLASS: If you would, identify yourself and your company you represent as well as your background as well.

MR. GRIFFITH: Thank you, Commissioner and Members of the Board. I'm Michael Griffith. I'm a CPA and president of Griffith & Associates, PLLC. We are primarily utility consultants in the Public Service Commission matters representing utilities. I represent Jefferson Utilities in this matter. Lee Snyder, who is president and an owner, expressed his regrets that he couldn't make it down from Jefferson County this morning.

And they would like for the Board to consider a different valuation. When we looked at the new tax bill, proposed tax bill, one of the things that's facing Jefferson Utilities has been historic losses for since inception. They've had difficulty to the extent that Mr. Snyder, he's the president, has historically taken his salary and immediately written it back in to the company to make payroll. So it's been that type of situation.

We've had repeated cases of the Public Service Commission, and a few of which have been appealed to the Supreme Court, where there's been limited relief that's been provided. They very much struggle and one of the things the Public Service Commission dictated really to Mr. Snyder, for him to look at all costs, all operations, one of which is his taxes. So as such, hired a consultant who will make the presentation on behalf of Jefferson Utilities.

MR. BURGESS: And I'm Scott Burgess, private consultant in this case offering on behalf of Jefferson Utilities and I appreciate the opportunity. I have a couple of handouts, if I may. If you will distribute those, Maureen, to whoever should get them, I would appreciate it.

I've entitled this presentation A Tale of Three Companies, Jefferson Utilities versus CSX and Norfolk Southern. I don't think versus is the right word there. The word should be Jefferson Utilities and CSX and Norfolk Southern. We're ultimately for Jefferson Utilities looking for what the Constitution requires, taxation that's fair and equitable, and we are not here to effectuate change to CSX and Norfolk Southern. We are in awe of CSX and Norfolk Southern. We appreciate the value estimates that they have and we just want to be like them. We want to be like Mike in that we would like the same treatment as those companies.

Ultimately, and you'll see this throughout the presentation, Jefferson Utilities is a hundred percent West Virginia.

MR. QUINN: Mr. Commissioner, I beg your pardon. I'm so sorry to interrupt. My name is Michael Quinn and I'm with Norfolk Southern Corporation. I heard the name of my company mentioned here, but I was not provided with a handout. Would it be possible for me to have one of the handouts?

MR. BURGESS: Sure.

MR. QUINN: Thank you very much, and again I apologize for interrupting. I just want to be able to follow what was said. Thank you.

MR. BURGESS: Again, I'm not here to effectuate change with these guys. These guys will talk to you after I get done and they can have at it. In the meantime we're here for Jefferson Utilities and we just want to again be treated fairly and equitably.

If you'll look at page one, the second page of the handout, this is Jefferson Utilities in a vacuum. If CSX and Norfolk Southern didn't exist, this is what I'd be talking about today, and let's just look at it real quickly. And before I go any further, let's be clear, and you correct me if I'm wrong, while the Tax Department provides the appraisals to the Board, these are your values. Ultimately these are your values, and we beseech you to review this information and make a decision today that Jefferson Utilities has been treated differently and we'd like to see a change made.

Secondarily, and I apologize -- I just want to make sure we're all on the same page, and I apologize if you already know this and it won't take half a second to say this, but there's three approaches to value. You have a cost approach, which is basically with utility stuff, it's just original cost less depreciation. It's the depreciated cost of assets. You have an income approach where you take current and historic income, recent income, and you ultimately divine a number to project into the future in perpetuity and divided by the cap rate and you get an income value. So you've got those two approaches.

Now, the third approach is the market approach, and that works well with houses, because there's a vibrant market out there for houses. The utility industry there's not a whole lot of sales of those. So as a surrogate a lot of times states will do a stock and debt. It's just stock plus the debt. If you can buy the good, you've got to take the bad. And the state usually performs that on publicly traded companies, but they don't weight it in any way. They don't consider it in the final value estimate.

Now, what you ultimately have with West Virginia is you've got two values. You've got a cost approach and an income approach. Now, the right number is either the highest, the lowest or somewhere in the middle, and that's called a correlation process, and that's part of our concern today is the correlation process. If you'll look at the top of the page, the cost for Jefferson Utilities is approaching $6 million. The income approach is a million two. Pretty yawning gap there between the income and the cost. And then you can see it was correlated to $5 million and change.

Ultimately, the Board weighted it 85 percent for cost, 15 percent toward income. If you actually look at the bottom, CSR Code of State Rules 110-1M -- 1M is a valuation of public utility properties. It says, "Once generated, the various estimates of value shall be correlated into a final value estimate. The income approach value shall generally be given primary consideration in the correlation process." The income approach. I'm not sure what litmus test Jefferson Utilities failed in that it got 85 percent cost and only 15 percent income. That's issue number one, and I'd like you to keep that top of the mind, because we're going to come back to it very shortly.

The second part of it is the box in the middle and this is the income approach. Basically, Jefferson Utilities was ten different companies three years ago, two years ago they were all brought together, so that's why you see zeros. Zero isn't an inaccurate number. It's just those ten companies coming together. Michael can tell you that those ten units lost money. If those numbers could be out there, they would be negatives.

But ultimately Jefferson Utilities as a combined unit since 2010, you can see the net operating income, that line, net operating income is 131,000 for 2010, 107,000 for 2011, and the average of that's 119. The income that the Board capitalized, the income into perpetuity, was $107,000. We're not here to complain about that. That's a fair number. We're okay with that. You can see the math, $107,000 divided by the cap rate less working capital, which is about one-twelfth of operating cost, you get a million two.

And you can see 4.2.2 at the bottom, the Board has followed the rule on that in developing the income approach valuation, net operating income after taxes before interest on a long-term debt shall be given primary consideration. So the Board followed that. So in essence on page one the Board deviated from the rule in the correlation process and adhered to the rule in choosing the income to be capitalized.

Now let's look at page two. And our friends from CSX and Norfolk Southern here today, and again we're in awe of them. We appreciate them. We're glad they're here today, and they can speak to this when their turn comes, but we're not talking companies in the millions. We're talking companies in the billions now, income in the billions, value in the billions. They have, CSX has a cost -- and they're very similar size companies. It's almost like they're sister companies. CSX has a cost of 24 and a half billion. Norfolk Southern has a cost of 24 billion. The income, as you can see, is about 12 and a half billion, about half of the cost, and for Norfolk Southern it's about 16 billion.

Look at the correlated values. It was correlated a 100 percent to income. Now here the Board seems to be adhering to the rule 4.2.4 in considering the income approach primarily, I don't know if a hundred percent is primary, but they've correlated a hundred percent, so you're following the rule here, Members of the Board, and we're okay with that, but what about Jefferson Utilities? Why was Jefferson Utilities 85 percent cost, 15 percent income? That just kind of defies logic given what the rules says. If there were no rules, have at it, but the rules suggest that you're doing it right for CSX and Norfolk Southern and wrong for Jefferson Utilities.

Now if you'll look at the income, the boxes in the middle, you've got the historic income with CSX and Norfolk Southern, net operating income, and you can see last year both of these companies made about $2.3 billion in net operating income. Jefferson Utilities made $107,000. The five-year average of that for CSX is 1.84. Norfolk Southern is 1.92, but look at the income you capitalize, Members of the Board. The average is 1.8. You capitalized 1.35 for CSX. The average is 1.92. You capitalized 1.7 for Norfolk Southern, and again you're clearly not using primarily net operating income. You deviated from the rule for CSX and Norfolk Southern while you stuck with the rule with Jefferson Utilities.

So every time the Board deviates from the rule, in appears favorable to these two companies and appears unfavorable to Jefferson Utilities. Now, what income is being used? Clearly net operating income isn't being used. If you'll turn the page, notice the income stream to be capitalized, the center column, net operating income, that's what 4.2.2 requires, and you can see the five-year average 1.8, the income is capitalized 1.35. Free cash flow. Free cash flow is basically the income stream that's been capitalized contrary to what the rule says for CSX and for Norfolk Southern.

Jefferson Utilities when they filed the return, they wasn't aware that they could file a different income stream or they would have. I think if you'll -- you have the universe in your offices, the big thick books, I think if you'll look through those books, you'll find that two companies were afforded free cash flow. Everybody else was net operating income, including Jefferson Utilities.

Now, what is free cash flow. If you're an accountant, you may already know this. If you don't, you may not. If you'll look at the next page, and CSX can correct me if I'm wrong, but this is straight from their annual report to stockholders, free cash flow is considered a non-gap financial measure. For those who don't know, gap is generally accepted accounting principles. The keyword there is accepted. This isn't -- free cash flow isn't generally accepted by the accounting community yet. It may be in the future, but for now it's not even recognized by gap.

Management believes, however -- now this isn't management of the Tax Department, this isn't management of the Board of Public Works. This is management of CSX in Jacksonville. Management believes that free cash flow should be considered in addition to rather than a substitute for cash. You're not even using cash. You're using net operating income. Cash is one point on the income stream, free cash flow is another point on the income stream. Net operating income is the third point on the income stream that the rule suggests you should use. So that's what free cash flow is. And if you look down below 4.2.2, net operating income shall be given primary consideration. If you look at the numbers on the previous page, net operating income was given no consideration. So again, as the Board deviates from the rule, it hurts Jefferson

Utilities and other companies, it helps CSX and Norfolk Southern.

If you look at page five, you can see the comparisons of the three companies and the top one, that's compelling. Look at the taxes paid as a percent of income. Now, CSX and Norfolk Southern is in a bunch of states and they're allocated six and a half percent to West Virginia for CSX, five percent for Norfolk Southern. So if you take the 2.3 net operating income times their percentages, you get about $150 million in net operating income for CSX, about 120 million for Norfolk Southern.

They pay surprisingly about the same amount of tax, 10.6 for CSX, 10.8 for Norfolk Southern. You divide that into the net operating income that's West Virginia based, they're paying about seven and nine percent in their taxes to West Virginia for property tax purposes. I'm not saying that number is wrong, but look at Jefferson Utilities. A hundred percent in West Virginia, they made $107,222 in net operating income in 2011. They paid $56,000 in taxes. They paid over half of their taxes -- of their income in taxes.

Now, there's something wrong with that picture. Imagine if every cost they had was half, clearly you're in a negative position, as Jefferson Utilities is and has been. You can't pay half your income in taxes, and that's exactly what's happened, and the value that we're talking about today, the $5 million value, is actually an increase from last year of $12,000. If you do nothing, Jefferson Utilities is going to pay $12,000 more next year than they did last year, 12,000 more, $68,000, and they're on track to be about the same income this year as they were last year.

Then if you'll look at the next two boxes they kind of go hand-in-hand. If you just take the income to be capitalized that you capitalized, Members of the Board capitalized, divided into the tentative assessment you've given them, basically you're telling CSX that you'd settle for about nine times the income we've capitalized. Norfolk Southern you'd settle for about nine times the income we capitalized, and I'm not saying that's a wrong number, but look at Jefferson Utilities. Jefferson Utilities for that little water company you've got up there in Jefferson County that has never made any money, we think somebody come in and write you a check for forty-seven times one year's income and I don't think that would happen.

The next one if you use the five-year

average, it drops it down to CSX, they'd pay about seven times one year's income, eight times for Norfolk Southern. We weren't offered free cash flow. It's still forty-seven times one year's income. I just don't think that's a realistic number. The last two is the essence of what we've been talking about, 4.2.4 is the weighted percentages. You weighted CSX and Norfolk Southern a hundred percent to income and poor little Jefferson Utilities you weighted 85 percent to cost, contrary to the rule.

If you look at the income stream capitalized with Jefferson Utilities and about everybody else, you used net operating income as per the rule, you used free cash flow for Norfolk Southern and CSX. God bless them. They're good citizens, they're good taxpayers of West Virginia. So is Jefferson Utilities. We just want to be treated like them. That's all we're here for. We're not here to bash them. We're here to be like them.

If you'll look at the last page of this first handout, and I'm quickly coming to a close, the top is just a rehash of what we talked about. The middle box is, you know, basically Jefferson Utilities a hundred percent in West Virginia. These companies, God bless them, are all over the country, and about six and a half and five percent. Here's what we think the right answer is. We'll accept the income to capitalize 107, even though it's net operating income, we'll accept that. We'll accept the value generated by you for the income approach, then we just want you to weight it a hundred percent just like you did these guys, weighted a hundred percent to income. You're looking at a million two ten in appraised value, seven twenty-six in assessed value. And again, the rule implies pretty heavily that that's the approach to take. Now, that's second and ultimately -- are there any questions on that before I go over the second handout by the Members of the Board?

COMMISSIONER DOUGLASS: I'm curious. You are totally operating in West Virginia or do you also operate in other states?

MR. BURGESS: Michael can answer that.

MR. GRIFFITH: We're a hundred percent in West Virginia in Jefferson County.

COMMISSIONER DOUGLASS: You're a hundred percent?

MR. GRIFFITH: Yes. We have about 2400 customers currently.

COMMISSIONER DOUGLASS: You're a co-op?

MR. GRIFFITH: No. It's a private company.

COMMISSIONER DOUGLASS: You're a private company?

MR. GRIFFITH: Yes.

COMMISSIONER DOUGLASS: I'm debating should we ask the Tax Department their reaction to this point of alleged discrepancies. Jeff, if you would.

MR. AMBURGEY: Commissioner Douglass, what we normally do after all the protests are heard is that we respond to the Board members in a memorandum addressing each of the issues, because oftentimes there are many. Once we get the transcript of the hearing, we send the Board a memorandum addressing each issue that we've heard and then the Board will have time to review that before the final meeting, which is December 1st?

MS. LEWIS: No, December 3rd.

MR. AMBURGEY: December 3rd. So we will respond to this in a memorandum to the Board once we receive the transcript.

COMMISSIONER DOUGLASS: Let the record indicate that we will only receive the comments and those will be evaluated by the Tax Department with a report to the Board by December 1. So you have further comments and further handouts?

MR. BURGESS: Briefly. If you'll look at the second handout we gave you, two pages. I've worked with three companies this fall in terms of their utility values, a gas company, a water company and a telecom company, and if you'll look at that and this is really just looking at the weighting, that generally is supposed to be primarily given the income approach, should be given primary consideration, as you can see, CSX and Norfolk Southern meets that. They get a hundred percent present weighting income, but if you'll look at the other railroads, that average you see on page one is excluding CSX and Norfolk Southern. Seventy-two percent. The railroads are weighted 72 percent on average toward cost and twenty-eight percent toward income.

Now, if you look at gas companies, it's about 50-50, cost versus income. If you'll look at water, it's about 44-56 and on the second page I've repeated Jefferson -- or railroads, and you can see this average includes the CSX and Norfolk Southern, and so your average is again 61 percent cost, 39 percent income. You know, it just doesn't look like there's a litmus test that follows 4.2.4 in terms of the income approach should get primary consideration. And you can see the telephone companies is all over the board, 60-40 higher to cost than it is to income.

You know, you can't look at this and see any consistency whatsoever. You know, it just seems to be random, capricious. I'll draw your attention on the first page to the water companies. Jefferson Utilities is weighted 85-15. They have another company, Lee Elder, the president of the company, has another company, Valley Water and Sewer, they don't make any money. They're weighted 20-80. He has two entities. One's weighted 85-15, the other's weighted 20-80. And then if you'll look at Fox Glenn Utilities, they're literally next door, literally next door to Jefferson Utilities and they're weighted 30-70. Did they vote right? Did they meet the litmus test, whatever occurs? We just can't see any rhyme or reason to the process.

And again, you know, the peer review is a wonderful idea. I think for Jefferson utilities and other companies I represent, they just want to be treated fair and equitably as per the Constitution. That's kind of what we're looking for from the Board today. Again, these are your values. You have treated Jefferson Utilities one way and you've treated other companies another way, and we just simply want to be treated fairly and equitably as those companies.

That concludes my prepared remarks. Michael can answer any operating questions. I can talk about the valuation process if you'd like to. I'm at your disposal.

COMMISSIONER DOUGLASS: Let the record indicate the Attorney General is excused and a member of his staff --

MS. WARFIELD: Dawn Warfield.

COMMISSIONER DOUGLASS: -- has been delegated to stand in. All right. You are ready for questions from the Board?

MR. BURGESS: Yes sir.

COMMISSIONER DOUGLASS: Are there questions from the Board of Public Works? And questions can only originate at this time from the Board of Public Works.

MS. STOUT: What's the basis for the data that you're providing for us? What is the source?

MR. BURGESS: It's the tentative assessment as provided for the Board of Public Works.

SECRETARY TENNANT: How long has Jefferson Utilities operated in Jefferson County?

MR. BURGESS: They were ten separate entities. They were pulled together two years ago, but they've operated for --

MR. GRIFFITH: Approximately twelve years.

MR. BURGESS: -- approximately twelve years, yes, ma'am.

MS. STOUT: Would you elaborate on that? Explain what you mean by ten companies. Was that overnight, did that occur over a year?

MR. BURGESS: Michael can address that.

MR. GRIFFITH: There were ten individual divisions of different sections of Jefferson County, some that were served by different water sources and the Public Service Commission mandated they unify the company. So it was a mandated PSC for them to begin reporting all of them under Jefferson Utilities. It's been commonly owned since its inception.

MR. BURGESS: Michael, you had mentioned Fox Glenn Utilities next door that was weighted 20/80, I think, 30/70, I think. You said they were perhaps in receivership and Lee Elder was going to have to take it over?

MR. GRIFFITH: Actually, Fox Glenn, which is right next door to the operating offices of Jefferson Utilities, they had significant operational problems and the Public Service Commission has considered putting them in receivership and one of the receivers, the first one that comes to mind would be Jefferson Utilities.

Actually, we'd like for Jefferson Utilities to acquire -- even though you receive values of that company, he cannot afford to pay one dollar and keep them in a good water operating service. So there's -- the value of Fox Glenn is actually pretty low. They really struggle to meet Health Department requirements. A lot of times that comes into play a lot more -- you're really accustomed sometimes of seeing the larger utilities.

A lot of these are smaller utilities. For example, Jefferson is 2400 customers, and a lot of the value of the assets that are in the ground of Jefferson, which I think the dispute goes against a little bit this valuation as well are contributed assets. You see that the assets are contributed capital through some developers that won't put an extension in and contribute that to Jefferson Utilities. Well, they only get the benefit of the new customers. They haven't been able to get the benefit of anything in rates at the

Public Service Commission, and it seems to work against them in cost for tax purposes. But anyway that's probably one that's a little bit different with Jefferson Utilities and maybe many others.

Jefferson Utilities has two distinct groups, a valley and a mountain. The mountain customers have a horrible water situation and it's very expensive to keep them in operation. As a matter of fact, it's the main drag on operating income for Jefferson Utilities. The valley is a lot of new residential development over the last ten years those customers are relatively cheaper to operate, so it's kind of a little different than many of the other utilities that probably come before you. I represent primarily non-property taxpaying entities, cities and PSD's and stuff generally, but that's just a little distinction here.

COMMISSIONER DOUGLASS: Let the record indicate the Attorney General has assumed his place on the Board here. I have one question for you. Your source of electric power, do you have your generation?

MR. GRIFFITH: I'm not sure. I think they have some generators up there but this is a water company. Most of their water use is in treatment plants and pump stations, and I think it's -- I believe they use Potomac Edison as their power supplier. I'm not quite sure, Commissioner.

COMMISSIONER DOUGLASS: Is that correct?

MR. BURGESS: I don't know. I'm not familiar with the operations.

COMMISSIONER DOUGLASS: Okay. Good enough. Are there additional questions? Yes, Ms. Secretary of State.

SECRETARY TENNANT: Correct me if I'm wrong, but is this the first time that Jefferson Utilities has protested assessments?

MR. GRIFFITH: I believe it is, yes.

COMMISSIONER DOUGLASS: Other questions? Further questions? If not, do you have any closing statements?

MR. BURGESS: We appreciate the Board's time today. We certainly appreciate a favorable outcome to this. You know, we're in your corner. We appreciate your efforts and we just want to be treated fairly.

COMMISSIONER DOUGLASS: Thank you very much for being here, and I can assure you from past experience, the Board will give you due consideration of your request. With that, you're excused.

MR. BURGESS: Thank you very much.

COMMISSIONER DOUGLASS: And we will call the next individual company to testify before this Board of Public Works is Norfolk Southern Railway Company, and you're representing --

MR. QUINN: I beg your pardon?

COMMISSIONER DOUGLASS: You're representing Norfolk Southern?

MR. QUINN: Yes, sir. My name is Michael Quinn. I'm an employee of Norfolk Southern Corporation. I'm the Director of State Taxes at Norfolk Southern, and I've been looking after the property taxes and sales and use taxes for many years here, property tax approximately 25 years. I'm a CPA, member of the Virginia State Bar, but I've been employed with Norfolk Southern for about that entire period, about the last 26 years. And I think you all may have in your packets, is that right, the handouts that I wanted to refer to. It looks like this (indicating). I have a few extras if anybody is missing one.

I wanted to make a few comments about the property tax assessment process in general, and so I hope you'll bear with me. Mr. Burgess touched on this, but I just want to -- because I think it would be helpful in the context of hearing a discussion about values, if we would focus on the purpose of this whole process. And, of course, that purpose is to determine the value of property, and we can get, as we do I think some of us that work in this full-time, we begin to become very focused on one or the other approach, the income approach or the stock and debt or market approach, or the cost approach. And sometimes we become so focused on those approaches and the data that we look at, that we begin to forget that the purpose of this whole project is to determine some reasonable value, fair market value for the assets that we use in our businesses.

In the railroad business most of the states in which we operate, and I did a little calculating earlier -- we're in 22 states. We go from, Norfolk Southern, we go from up in New York and New England with arrangements with other railroads that we partner with down into Florida. We go out to St. Louis and actually get into Kansas, but we've just got some rights across the bridge that Burlington Northern owns there, and we even have a little property in Des Moines, Iowa, although that's all we have as far as operating property in Iowa. So we're spread out over the eastern half of the United States and to a degree, a very slight degree, over into Missouri and into -- Missouri is a big state for us, but as I mentioned, Kansas and Iowa, we even get over there. Down in Louisiana, Mississippi, Alabama, Georgia, all along the coast and so our operation takes in about half of the United States. And of those states, of those 22 states that we -- is that an emergency?

COMMISSIONER DOUGLASS: Yes.

(WHEREUPON, due to a fire alarm, a recess was taken.)

COMMISSIONER DOUGLASS: I have a quorum of five, and so we will bring this Board of Public Works back to order, let the record indicate at approximately 12:40, and we'll resume hearing from CSX.

MR. QUINN: Norfolk Southern.

COMMISSIONER DOUGLASS: Norfolk Southern. We'll resume hearing from Norfolk Southern. Let the record indicate we were in recess approximately 35 minutes due to a declared emergency in the Capitol Complex, which has been resolved. So we are back in session, so you may resume your testimony and our court reporter is ready to operate as well. Proceed.

MR. QUINN: Thank you. Before we left the building, I was making the point that the object of the exercise and work that's done in reaching values is just that, to come to the value of the property, and I made the point that in doing that we look at so much data that sometimes we begin to over focus on the numbers representing the income or perhaps the cost, the amount of money that's been invested, and sometimes in the notion of what the market value of comparable property would be, and we began to look at those things so closely that it's always good, I think, to keep in mind that the purpose of the work we're doing is to come to some notion of what is a fair value of the property that's being assessed, and that's generally, as Mr. Burgess pointed out, it's accomplished by a look at an income approach and there the notion there with the income approach is that there is a relationship between the value of property, commercial type property, and business type property, that there's a relationship between the value of that property and the income that it can produce.

With the cost approach, the idea there is that there's probably some relationship between what somebody paid for something and what its value is. But with that cost approach you also have to focus on the fact that just because somebody paid something, paid a certain amount for a piece of property, doesn't mean that they actually, that that actually reflects its fair market value, because of course deterioration can occur, and even what we refer to as obsolescence, the asset may have sold -- I always think for example somebody cited the people that had this perfectly well equipped up and running buggy manufacturing operation, Studebaker, they were huge in manufacturing wagons and buggies, and then the automobile, internal combustion engine came along and they converted, but much of what they had became obsolete. And then there's also this notion of deterioration that just not from some economic principle but the assets themselves deteriorate, so the actual cost that was paid again may not reflect the fair market value.

And finally that market approach, here we've got in our situation at Norfolk Southern -- as I mentioned, we're spread out over 22 states, and most of that, the track that we put in place, I say most of it, a good portion of it was installed and we have to maintain it, but it was installed to serve small localities back when that was the only way really to get goods from one place to another and for passengers to travel was on the railroad. So if we were to build it all over again, I think there is substantial question about whether or not economically making the investment to connect a very small locality that's already served by a highway, whether it would make economic sense to install a rail line into that small locality. So all of those things go into effect.

It's not simply a mechanical approach of look at the income, come up with a capitalization rate or relationship between income and value, apply that rate and, bingo, you've got it. It's all about judgment, and for many years I've seen our value in West Virginia increase and our business hasn't actually increased. I want to go back to the year 2000, and the reason I want to go back to the year 2000, in 1999 my friend Kerry Carnahan's railroad, CSX, and my railroad, Norfolk Southern -- I call it my railroad. I think I've been there long enough maybe to use that expression, but Norfolk Southern and CSX got into a bidding war for the stock of Conrail Consolidated Rail Corporation, and Conrail operated in the east along with Norfolk Southern and CSX.

In fact, Conrail operated here in West Virginia, so we got into a bidding war. They wanted to buy all of the stock of Conrail. It would have resulted in Norfolk Southern being something of a marginalized large regional railroad, so we weren't going to let that happen. So we started bidding up the price of the stock and finally we found peace and got together and the two companies together, Norfolk Southern and CSX, bought all the stock of Conrail. That happened in 1988 -- I'm sorry, 1998-1999, and we divided up the routes that Conrail had.

Norfolk Southern took about 58 percent of the rail lines of the former Conrail and CSX took 42 percent. So the year 2000, the reason I focus on the year 2000, is it is the first year that Norfolk Southern is the same railroad as it is today. We increased the size of our railroad by approximately a third through that transaction. So it really doesn't make sense to compare what we're doing today with what we did before the year 2000, because we weren't the same railroad back then. We're a third bigger now.

And the reason I went through that is because that's the start date for the data I want to look at. And if you'll look at this graph, the first graph I gave you there, it shows our unit value and West Virginia value and the tons of freight that we've hauled going all the way back to the year 2000. I say all the way back. It doesn't seem so long ago to me really, but it's as I say since we've been the same railroad we are today, and the tons of coal shipments and those are coal cars actually.

Just for information, most often a coal car carries about a hundred tons of coal, and so those shipments that I show, you'll see that it looks like one line is the bottom of the graph, but actually that's two lines. Those are the tons of freight, the total tons of freight that we handled in each of those years and also the coal shipment. And you can see how we're not even today hauling as much freight in total as we did back in 2000. Our business, the level of our business has not increased, and -- I mean it's been all over the news, it's not a secret, that coal shipments are down. And yet at the same time you can see our unit values increasing and our West Virginia value increasing every year.

And if the graph, the reason I use that graph, if you just look at the data, it's kind of hard to make sense out of all of that data below, but those are the actual numbers through each year, and then if you look below that, I've indexed it so that, in terms of billions and millions and hundreds of thousands of shipments, all of that will fit on the same graph. All I've done is start with the same base year 2000 and compare each of those points of data with the point for the year 2000. That's what indexing accomplishes. But the raw data is there as well so that you could look at the unit value.

In 2012 it's almost 70 percent higher than it was in the year 2000, but if you look at the tons of freight -- 2012 isn't over, but I've got the 2011 data -- we're only hauling 96 percent of what we hauled in the year 2000. So the point of all of that data is that our railroad isn't, businesswise we're not hauling more freight, we're not doing more business, but in spite of that, in spite of my pleas, my value keeps going up.

But I want to put some, an overall bracket around everything that I say here. There is a range, as I mentioned, there's three approaches, and the whole idea is to get to some notion of fair market value for property, and there's a range of values that would probably be fair. That's why a buyer and seller go back and forth and finally reach some understanding. Here we might go back and forth but we've reached an understanding about the value and I think the value I had to take this year in West Virginia, 16 billion for all of our rail assets, which are unit value, $16 billion, and that's reflected here.

That value is within a range of reasonable value for our operating property, but it is at the very high end of that range of values, and the reason I'm confident of that, as I said, I've been doing this for 25 years, I had a notion every year at the beginning of the year when I thought I was going to have to see when I went around to all of the states and reached an understanding about our assessment.

This is at the very high end and I can tell you that -- well, I made a note about it, because I don't normally try to determine how many states do I visit where I have a unit value, but it was 19 states that I deal with regularly every year, and out of those 19 states as I mentioned, we have some property in Des Moines, Iowa, rail property. I got a number in Iowa that was within one percent of the number that we took here in West Virginia, and that was the highest number I've had so far.

I can't settle with Florida on a unit basis. I always appeal and we settle on a state value and I run through the same situation in Kentucky where I go to the protest resolution branch. So those two states I really don't know what my unit would be, because I don't agree to a unit there. I agree to a state value with them. But I go through very much the process I do here in West Virginia, talking about the three approaches, talking about value.

We've made money and we continue to make money in spite of the fact that our business is not increasing because we've delivered better service every year and people are willing to pay a little more for good service. So we have been able to increase our rates and we have streamlined our operation, cut costs viciously, and that's allowed us to remain profitable, and it's that income that is the focus that leads to a notion of what value is. We've got property that is meant to produce income and that income is some measure of what the value of that property could be.

The only other thing I would like to point to is the second graph, and what I've done there and I didn't notice till I got here this morning and saw Kerry, Mr. Carnahan, but he is going to touch on the notion of capital expenditures. We made about $2 billion in net operating, what we call net railway operating income. That's the actual revenue that we ran running the railroad, subtracting out the expenses related to the railroad, no debt service, but we take out the taxes. And if you do that, we made about $2 billion and we spent about $2.2 billion plowing it back into the track, rails, ties, ballast and track. Every year we are one of the most capital intensive industries in the country and you can imagine why. We're spread out over half the country and everywhere we go, I always say everywhere we go we leave tracks. It's tracks, I mean it's rails, ties and ballast.

MS. WARFIELD: The second graph you're talking about, I don't have that.

MR. QUINN: It's this one. They don't look too awfully different.

MS. WARFIELD: I only have one graph. I've got two pages.

MR. QUINN: And I can understand how that happened. I happen to have a couple more copies. I'm sorry. I tried to send this by email. Thank you for pointing that out to me. The second graph just shows exactly the same thing as the first as far as the coal tonnage and the coal shipments and the tons of freight, but what I've done there is I've attempted to show how much we've had to plow back into the railroad every year, and it's horribly expensive and it's all done in current values. In other words, we go out and buy track material and ties and the ballast, the rocks, and a huge devotion to keeping the track in good shape, signals so that we don't run into ourselves. The track is inspected and some parts of it are inspected two times a week. They walk the track.

It's just horribly expensive to keep all those in place. It's not like an asset where you maybe poured the foundation of a building and it stays there. We're constantly reviewing, inspecting and replacing rails, ties ballast and signals. And as I pointed out, it's horribly expensive. We had income in the neighborhood of 2 billion, but we plowed back in 2.2 billion and that's a cash flow, a look, it's a different income approach and most assessors would look at a cash flow approach as saying that looks at the income as calculated by the accountants, but then also look at the cash, because the purpose of being in operations in any kind of business is to throw up cash and to the extent the business is able to generate its own cash and provide something for the owners, that's worth looking at. That's the reason we think cash flow is important and I will say no more about it because I know Mr.

Carnahan wants to mention that.

COMMISSIONER DOUGLASS: For the court reporter, for the record show that the Superintendent of Schools Dr. Marple has returned to the table. You may proceed now.

MR. QUINN: Thank you, Mr. Chairman. I think that's about all the information I wanted to provide. I do want to say in spite of the fact I mentioned that West Virginia gives me one of the highest values that I encounter in any of our states, I have always felt like, as I mentioned how long I've been doing this, but I've always felt like I was received politely and that the information I provided was taken seriously and we have a good honest back-and-forth discussion about value. I've felt for years that it was higher than it needed to be, but as I say, we do it professionally, politely, and it's well received and I feel like it's at the high end of the reasonable range but it's still within that range. And I thank you and I thank the consideration that staff gives me.

COMMISSIONER DOUGLASS: Thank you. I appreciate the industry and your level and I've listened to 44, and you will be fairly evaluated here. I just have one question. Is part of your expenditures for the total enlargements, is that part of your large expenditure?

MR. QUINN: Yes, the capital expenditure is normally under assessment context, evaluation context. If a view is given to the cash flow approach, the assessor will try to separate out the amount that is invested for expansion, because that really should not be an indicator of the value of the assets that are in place already. In other words, if we've got, if we spent half of that $2.2 billion to try to expand our operation, that doesn't provide us with an indicator of the value of the operation that's in place on the assessment date.

So the point you make is, yes, we should take out of the consideration the amount for expansion, and I provided to the staff when I came, I think it was in July but it may have been August, I just don't recall, I provided an indication of the number of ties, rail ties that we had replaced and the number of new ties for expansion, the miles of rail, steel rail, and the poundage with the size of the rail, its ability to handle traffic and the number of miles for expansion, the number of bridge ties, the number of new cars we purchased, and the number of old cars that we retired, and the same for the locomotives.

In each of those factors, the vast majority of what we purchased was for replacement and not expansion. But I'll be as honest here as I was with Jeff and the staff when I say that a new locomotive has more mode of power than an old one. If we take an old locomotive 30 years old, and we've still got them and use them and they're 35 years old and they've been rebuilt and everything, but if we would buy a new GE locomotive, it's got more power and it's more efficient than one of the older locomotives. So even when I replace a locomotive, it's replacement but I am getting a little bit of expansion type capital expenditure, but when you look at the total number of the cars, locomotives, the ties, rails, bridge ties, all that, you can see, and I provided that data, the vast majority of what we do in that 2.2 billion that I mentioned for capital expenditures is replacement and not really expansion.

COMMISSIONER DOUGLASS: You answered my second question. Thank you.

MR. QUINN: Oh, good.

COMMISSIONER DOUGLASS: Other questions? Any Board member have any comments?

(No response.)

COMMISSIONER DOUGLASS: Hearing none, thank you for being with us.

MR. QUINN: I appreciate your time and your attention.

COMMISSIONER DOUGLASS: And we apologize for the delay.

MR. QUINN: Oh, no, it's quite all right. Glad to see that we're all being safe.

COMMISSIONER DOUGLASS: All right. Now we'll proceed in calling CSX Transportation forward and please identify yourself and who you represent and background, whatever.

MR. CARNAHAN: My thanks to the Board today for hearing my comments. My name is Kerry Carnahan. I'm the Director of Property Taxes for CSX Transportation. I've been with CSX Transportation now for 19 years in the Property Taxes. Prior to that I spent just shy of ten years with the State of Ohio where I assessed railroads for property taxes, so I have kind of a dual perspective of what goes on, from the State's perspective and from the rail perspective.

What I'd like to talk about today is -- if you don't mind, could I sit down? What I'd like to talk about today are a couple of items, and I had some handouts that I hope you all have.

I'd like to talk a little bit about the process in West Virginia of the valuation of property taxes and how it relates to other states. First of all, I guess I'll just jump to my first exhibit, which is CSX Transportation's unit values for what I call 2011 and 2012. This is kind of divulging everything and maybe even letting some trade secrets that my friend Mr. Quinn doesn't know all my answers.

What's unique in West Virginia is the tax year is ahead one year compared to all other states, but it's based upon the same financial data. So for instance Alabama's 2011 tax year is West Virginia's 2012 tax year, but they're based upon the same financial data. So for comparability purposes, we are talking about the same valuation. So as you can see here, they're in alphabetical order. West Virginia is at the top of the range, as Mr. Quinn puts it, the acceptable range that we find for valuation purposes. In 2011 they were just shy of 12 billion and as you can see for 2012 for tax year 2013 at 12.6. So they are well ahead of most other states, although it is within the acceptable range of values, it's at the top and at the painful portion of the range, I would say, that we consider to be acceptable.

Some of the things that I like to point out are as we look to how other states do valuation, it has been mentioned today that free cash flow has been considered in West Virginia. I, too, am -- I'm in 23 states, including Mississippi, two Canadian provinces, and the District of Columbia. So fifteen of the states that we deal with that are listed here do unit valuations and there's various ways that unit valuations are done, but the vast majority of these states that are doing unit valuations are giving free cash flow some consideration. So we have been going around telling the states that railroads are unique, and I think the second handout I have here will prove that to you that railroads are unique when it comes to valuation perspective and net operating income doesn't tell the full story.

One other point I'd like to make in my almost 30 years of valuation practice is that valuation of any company is more of an art than a science. To say that you can use a formula to value all companies is not the way that you should go about it. You have to look behind some of the numbers sometimes. For instance an income approach for a certain company may not be appropriate because they've got various special charges, they've got items that may not be a normal operating income item that you need to consider. So as you do a valuation, you may say I do a valuation, I've got an income approach number, I've got a cost approach number, the income approach number is suspect to me, so I'm not going to give it as much weight as I would otherwise. Some companies have very pure income, like for instance the railroads have very pure income numbers, so you could put a lot of reliance on income to come up with the proper valuation, so I just wanted to make that point.

COMMISSIONER DOUGLASS: Since you're on that level, I have a question.

MR. CARNAHAN: Sure.

COMMISSIONER DOUGLASS: And as I viewed this, the evaluation growth amongst the state is basically equal, as I see.

MR. CARNAHAN: I'm not sure. When you say year over year, the percentage increase across all states?

COMMISSIONER DOUGLASS: Well, in 2011, well, in fact West Virginia, it's about a billion dollars as growth. You go up above and look at South Carolina and it's basically the same.

MR. CARNAHAN: Right. Yes.

COMMISSIONER DOUGLASS: Is there any basis for that?

MR. CARNAHAN: Well, they're all essentially trying to arrive at the same basis, and that's fair market value, and they all basically have the same things that they're looking at, income cost approach. Some will look at stock and debt, but not weighted. If I understand your question correctly, it's not unusual to see states go up at the same level.

COMMISSIONER DOUGLASS: Okay. This is my question. My first blush is this is strange to see it the same across the states, and you used Alabama as a reference earlier and again back we're basically the same group, over a billion dollars.

MR. CARNAHAN: Yes, and that's not unusual. I may pressure West Virginia a little bit more to not grow as high because they are at the top of the range. So folks at the bottom of the range, you may have a little more acceptable notion to say, hey, you can go a billion dollars, but if you're at the top of the range and you try to go up a billion dollars, there's going to be more pressure to do so.

COMMISSIONER DOUGLASS: Excuse the interruption.

MR. CARNAHAN: Oh, that's quite all right. That's an excellent question. So a couple of points that I wanted to make at least about CSX Transportation is that coal is our largest commodity that we haul and we are struggling with the coal industry right now because of natural gas prices, as I'm sure you're all aware, natural gas is about $2-$2.50 per NCF, which a lot of the coal plants have now started to burn natural gas versus coal.

So coal is about 25 to 30 percent of our overall business. We have seen coal down about 13 percent this year, 2012. We saw it declining last year and we foresee that occurring into the near future. We don't foresee those natural gas prices rebounding or increasing to where coal plants start to go back to natural -- or to coal. So in the third quarter alone this year we were down 17 percent, and these are revenue figures. Our revenues were down 17 percent. So these are significant numbers.

We're talking CSX is about just shy of $12 billion in revenue. Coal makes up 25 percent of that. So when we see these types of numbers decline, it starts to concern us and we feel that it starts to affect our values.

So I believe now I'm ready to move on to the second handout that I have here. The second handout is just a couple of slides out of a PowerPoint presentation that I've used with most of the states this year. It's basically saying that net operating income isn't insufficient to look at when you look at a railroad. Free cash flow tells a more realistic story of the earnings or of the income that needs to be capitalized for property tax purposes. So the first bullet point here, railroads, and I believe Mr. Quinn touched on this, that railroads are one of the most capital intensive industries in the country.

And as we flip to the second slide, you'll see why. And book depreciation is significantly insufficient to represent the cost of asset depreciation. Real assets are extremely long-lived and cash flow after reinvestment tell a significantly different story than book earnings.

What we're trying to say here is, when you look at net operating income, you're only allowing an expense for depreciation. For instance, if I buy a hundred million dollar asset that lives, that's 50 years long, you only get an occurrent expense of $2 million of that, but when you look at it from a cash flow perspective, you deduct the full hundred million dollars. It's kind of like if you're looking at your house. You don't look at how -- if you've got to put a roof on your house, you look at how much you've got to spend this year, not how much you can ratably stretch it out over the course of 20 years or so. So that's what we're really saying when we say free cash flow is really what we need to look at when it comes to the rail industry.

And on the second page, if you'll flip to this chart, this is why we believe it's most appropriate for railroads. As you can see, capital expenditures as a percent of revenue, we spend about 17 to 20 percent of our revenues back into the railroad for capital expenditures. The vast majority of that is to replace existing assets. You've got a hundred year old asset and it cost a thousand dollars a hundred years ago, it costs you a million dollars today to put in. So you're replacing assets at a much higher cost.

So when we ask for consideration and free cash flow, this is why. We feel that most other industries, if you look at net operating income, their capital expenditures are likely closely reflected or likely close to their depreciation numbers. So for instance if you have a company that spends a billion dollars, their depreciation, a telecom for instance that spends a billion dollars, in depreciation it's likely a billion dollars. Railroads are unique in that aspect where our depreciation expense for CSX anyway for 2011 was about $980 million. We spent $2.3 billion to keep up our assets.

So in a net operating income perspective, you're deducting $980 million, but that doesn't tell the full story of what it takes to keep your railroad running and earning that type of revenue. So as we look at the last slide here, this basically tells the difference of depreciation versus capital expenditures. The blue portion of the chart is depreciation and the -- I'm not sure what color that is. We'll just call it maroon. Pink? Okay, we'll go with pink. Is what is the portion in excessive of depreciation that represents nonstrategic capital. When I say nonstrategic capital, I mean that is the capital that's replacing existing assets. You heard Mr. Quinn refer to growth capital. That excludes the growth capital. We spend about $270 million a year growing our business. Of the 2.3 billion we spent, 270 million of that was growth assets. So we don't ask for that as a deduction when we're doing our free cash flow.

One last point I think I would like to make before any questions is, as we look through and we heard some comments from Mr. Burgess about free cash flow, I think the railroad industry is unique there. I'm not sure what free cash flow for his company would be, but if for some reason the Board sees fit to change the valuation for CSX Transportation or change the income basis, I would ask that we go back and look at the capitalization rate that was used in the income approach. If we're going to use a higher income, I think we need to look at the capitalization rate and maybe increase that so we're using a comparable base. So with that, those are really the only comments I have and I welcome any questions.

COMMISSIONER DOUGLASS: Thank you. Are there questions from members of the Board?

(No response.)

COMMISSIONER DOUGLASS: There seems to be none. Thank you very much, and we will give you due consideration from the local Tax Department.

MR. CARNAHAN: Thank you very much.

COMMISSIONER DOUGLASS: Are there others to be heard in reference to the valuations? Let the record indicate I see none, no indication that there are others. We'll go on, then, to the next item on our agenda and that is a presentation by the Department of Education on the material bond.

DR. MARPLE: Mr. Chairman, we actually have Mr. Simpson here, if you have questions. This is routine required by statute that any vendor that is placed on the instructional material adoption list must issue a bond. This vender has been on the list for some time but switched names and this is a replacement bond.

MS. WARFIELD: It's been approved by the Attorney General.

COMMISSIONER DOUGLASS: Are there questions that need attention? Is this the same amount of bond that we previously approved, 10 million?

DR. MARPLE: This is a $10,000 bond.

COMMISSIONER DOUGLASS: They're saying you have some over the place.

DR. MARPLE: I think there's 5,000 and 10,000. Two and ten. Two for the extra material, supplemental materials, 5,000 for the primary source materials -- I mean 10,000 for the primary source materials. Two and ten.

COMMISSIONER DOUGLASS: Further questions?

(No response.)

COMMISSIONER DOUGLASS: Hearing none, is there a motion to approve?

AUDITOR GAINER: So moved.

MR. MARKHAM: Second.

COMMISSIONER DOUGLASS: Moved and seconded that we approve this amount of bond for the Department of Education. And that is to Davis Publications Incorporated, I guess indicated here. Yes. Discussion?

(No response.)

COMMISSIONER DOUGLASS: Hearing none, all those in favor of the motion to approve, signify by saying aye.

(Ayes responded.)

COMMISSIONER DOUGLASS: Opposed no.

(No response.)

COMMISSIONER DOUGLASS: The motion carries. Are there other items to come before the Board before we go into an executive session?

SECRETARY TENNANT: I don't know if it's appropriate now or after we come back from executive session, but I don't know if anybody wants to know any updates with the weather in terms of voting. I'm sure you've all heard with election day early voting taking place, on Tuesday there were six counties that suspended, we had suspended early voting for, two yesterday, none officially today. There could be some in place as I'm speaking, but we have seen the impact of the storm on early voting when you have about 14,000 come out on Monday and 5600 on Tuesday. I don't have the full results from yesterday.

We are on schedule, obviously, for early voting to go through Saturday, November 3rd, and we're making preparations for what we might face on Tuesday, the 6th in terms of limited electricity. For that we might change precincts. Precincts might be moved to a facility that has power or precincts might be consolidated. That's probably what you'll see the most of, depending if we get any flooding or anymore severe weather between now and then.

And then as far as electronic voting machines, they do have battery backup, not for the full thirteen hours of an election day, but that's where paper ballots and absentee ballots that counties have been giving for absentee voting would be used if power becomes limited.

So I can answer any questions. We're working with the Governor's office and making schools and courthouses priorities and then also house shelters. That's where I was when I came in late the first time, working with the shelters that are up in 47 counties right now. So it's really just fluid for us, but I know there's been a lot of questions, people saying is the election going to be postponed. Well, we have a federal presidential election and only Congress has that power to do what it needs to do there, but I think the contingency plans and working with the county clerks, we have good plans set in place.

COMMISSIONER DOUGLASS: So the plans are as has been indicated previously and you haven't had to make any specific alterations extending voting or anything of this nature?

SECRETARY TENNANT: No. We cannot -- early voting is already scheduled to go through about five o'clock on Saturday. We can't extend it beyond then because clerks need those two days to wrap up early voting in preparation for election day, so early voting won't be extended and it's really what we see. Today is Thursday. By Friday morning I'm supposed to have a list of precincts that we know will not have electricity. So once we have that, we'll be working with the counties to make any changes that they might need.

COMMISSIONER DOUGLASS: Consolidating or something?

SECRETARY TENNANT: Either consolidating or just moving even, and the way that those voters will be notified, at the very least there will be a sign on the door of the precinct where they would have voted, "moved to another place." That has happened before in elections where maybe one or two precincts in a county needed to be changed because of that, but people will not be notified by phone. We have had situations in previous elections where voters have received phone calls saying that their precinct was moved, when indeed they weren't moved. It's just a way to try to trip a voter up, so we will not be, or counties won't be phoning voters. So they'll see it on the door or --

MS. WARFIELD: So you'll see it on doors or in the newspapers or on the news?

SECRETARY TENNANT: Or media, yeah, on the door or the media.

COMMISSIONER DOUGLASS: Are there questions of the Secretary?

(No response.)

COMMISSIONER DOUGLASS: Hearing none, thank you for your report. I would entertain a motion to go into executive session.

AUDITOR GAINER: So move.

MR. MARKHAM: Second.

COMMISSIONER DOUGLASS: Moved and seconded that we go into executive session. All those in favor signify by saying aye.

(Ayes responded.)

COMMISSIONER DOUGLASS: Opposed no.

(No response.)

COMMISSIONER DOUGLASS: Motion carries. We are in executive session. Everyone is excused except the Board members or the designees.

(WHEREUPON, the Board was in executive session, with further proceedings as follows:)

COMMISSIONER DOUGLASS: Let the record indicate we are back on the record out of executive session. No actions were taken in the executive session. Are there other items to come before the Board of Public Works?

(No response.)

COMMISSIONER DOUGLASS: I hear none.

AUDITOR GAINER: I move we recess until December 3rd, the time to be set.

COMMISSIONER DOUGLASS: Moved that we be recessed. Second?

MS. WARFIELD: Second.

COMMISSIONER DOUGLASS: All those in favor signify by saying aye.

(Ayes responded.)

COMMISSIONER DOUGLASS: Opposed?

(No response.)

COMMISSIONER DOUGLASS: Motion carries. We are in recess to December 3rd.

(WHEREUPON, the meeting was recessed at 12:26 PM.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF PUTNAM, To-wit:

I, Penny L. Kerns, Certified Court Reporter, do hereby certify that the foregoing is a correct verbatim record of the proceedings had at the time and place set forth herein.

Given under my hand this 26th day of November, 2012.

Penny L. Kerns, CCR
Notary Public

My commission expires May 13, 2018.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
PENNY L. KERNS
69 SHANNON DR.
HURRICANE, WV 25526
My commission expires May 13, 2018