

West Virginia Board of Public Works
November 2, 2011 – 10:00 a.m.
Governor's Cabinet and Conference Room
Minutes

Attendees:

Members

State Auditor Glen B. Gainer
Secretary of State Natalie E. Tennant
State Superintendent of Schools Dr. Jorea Marple
Kurt Dettinger for Governor Earl Ray Tomblin
Dawn Warfield for Attorney General Darrell V. McGraw, Jr.
Danny Ellis for State Treasurer John D. Perdue
Sandy Marinacci for Comm. of Agriculture Gus R. Douglass

Guests:

Jeff Amburgey, Tax Department
Scott McNeil, Tax Department
Lora Lane, Tax Department
Cynthia Hoover, Tax Department
Kathy Schultz, Attorney General's Office
Russ Rollyson, Auditor's Office
Ashley Summitt, Secretary of State's Office
Sheryl Webb, Secretary of State's Office
Jake Glance, Secretary of State's Office
Ashley Parsons, Secretary of State's Office
Andrew Ickes, Secretary of State's Office
Daniel Hart, Secretary of State's Office
Alex Macia, WV Oil Gathering
Dale Steager, WV Oil Gathering
Doug Ramsden, Beckley Water Company
Matt Stanley, Beckley Water Company
Phil Kabler, WV Gazette

The West Virginia Board of Public Works met on Wednesday, November 2, 2011 at 10:00 a.m. in the Governor's Cabinet and Conference Room, Building 1, Suite 10 of the State Capitol Complex. Due to the absence of Governor Earl Ray Tomblin, the meeting was called to order and chaired by State Auditor Glen B. Gainer.

(Attached is a transcript of the meeting.)



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

STATE OF WEST VIRGINIA
WEST VIRGINIA BOARD OF PUBLIC WORKS

November, 2, 2011

10:00 AM

GOVERNOR'S CONFERENCE ROOM
Capitol Complex, Building 1
Charleston, West Virginia

PENNY L. KERNS
Certified Court Reporter
and Notary Public

GARRETT **R**EPORTING **S**ERVICE

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BOARD MEMBERS PRESENT:

GLEN GAINER, Auditor

NATALIE TENNANT, Secretary of State

DANNY ELLIS, Proxy for the Treasurer

SANDY MARINACCI, Proxy for the Commissioner of Agriculture

DAWN WARFIELD, Proxy for the Attorney General

KURT DETTINGER, Proxy for the Governor

DR. JOREA MARPLE, Superintendent of Schools

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1 AUDITOR GAINER: The ayes have it. Next
2 on the agenda would be to receive comments concerning
3 notices of tentative assessments and values for tax year
4 2012 on public utilities. Jeff Amburgey, would you like to
5 make a few comments? And I think we have one person here
6 to protest.

7 MR. AMBURGEY: I believe that's
8 correct. If it please the Board, my name is Jeff Amburgey,
9 Director of the Property Tax Division. I'm here on behalf
10 of Tax Commissioner, Craig Griffith. Most of this is in
11 the minutes from the last meeting, but I will just repeat
12 just a little of it.

13 For tax year 2012, the current tax year the
14 tentative values that are sent to public utility
15 corporations were approximately \$8.5 billion this year.
16 There's an increase of about \$295 million over the prior
17 year and if those tentative notices become final, that
18 would be an increase in property taxes for the utility
19 companies of about \$6 million this year.

20 The Board is here today to entertain
21 protests of the tentative valuations. I think we have one
22 company that's here to appear and address the Board. We
23 have another company that has filed a letter. Each year we
24 also have some corporations that file their tax returns

1 late or provide us with additional information. We will
2 take all of the additional data and once we receive the
3 transcript of today's hearing, we will provide the Board
4 members with our recommendations from the Tax Department of
5 any changes to make because of the additional information
6 and because of the appeals, and again, we will get that to
7 the Board before the next meeting, which is December 5th.

8 And so we will get that to them in time to
9 review our recommendations. I'll be glad to take any
10 questions, but I think if it's okay with the Board, maybe
11 let the taxpayer present their protest and then if the
12 Board has any questions, then I'll be glad to entertain
13 them.

14 AUDITOR GAINER: Thank you, Jeff. We do
15 have one representing their protest. If you care to
16 address the Board, please come up to the table. Please
17 state your name for the record.

18 MR. MACIA: Yeah. Thank you. May
19 it please the Board, I'm Alex Macia, and I'm here with Dale
20 Steager and we both represent the West Virginia Oil
21 Gathering Corporation, which is a subsidiary of Clear Fuel
22 Energy, Incorporated, and we are, you know, one of the
23 protesting taxpayers here.

24 You should have in your folder a letter that

1 Mr. Steager wrote to Secretary Tennant, dated October 21st,
2 2011. I'm just going to summarize it very quickly and let
3 you study that West Virginia Oil Gathering Corporation
4 manages an oil pipeline that runs essentially from Roane
5 County to the Ohio River. One of the constituent elements
6 in the oil production in the state is brine. We operate a
7 brine disposal unit in West Virginia, and I think we may
8 have one in another state.

9 But the purpose of our protest here is the
10 treatment of our brine disposal systems, which we believe
11 are pollution controlled systems as defined in Chapter 11-
12 6A-2. This is something that has to be reviewed and
13 approved by the Department of Environmental Protection. We
14 believe it will make a significant difference in our
15 tentative assessed property tax. The original cost of this
16 equipment is \$2.3 million. We believe that it should be
17 assessed at the salvage value, which of course we believe
18 would reduce overall tentative tax assessment. And if the
19 Board has any questions.

20 AUDITOR GAINER: Any questions from the
21 members of the Board?

22 SECRETARY TENNANT: What would the salvage
23 value be?

24 MR. MACIA: Well, the salvage value

1 I think is defined in the Code as five percent, and so
2 you're looking at sixty percent at five percent of the
3 original cost in West Virginia, two point three or closer.

4 SECRETARY TENNANT: Okay.

5 MR. MACIA: And I think to reiterate
6 again, and as Mr. Amburgey knows, this is that the
7 Department of Environmental Protection I don't think has
8 made a ruling specifically or definitively as to what our
9 equipment is, if it does meet the definition of pollution
10 control facilities. We believe that it does. We believe
11 that other facilities that have similar equipment or do
12 similar business have been assessed at that -- have had
13 that special valuation.

14 AUDITOR GAINER: And all this equipment
15 just deals with dealing with the brine?

16 MR. MACIA: Absolutely. Yes, sir.

17 AUDITOR GAINER: Any other questions from
18 members of the Board?

19 SECRETARY TENNANT: You said you're waiting
20 on the DEP to define --

21 MR. MACIA: That's my understanding
22 of it. Maybe Mr. Amburgey --

23 SECRETARY TENNANT: Is there any indication,
24 Mr. Amburgey when that might be --

1 MR. AMBURGEY: The reason we asked Dale
2 Steager, who is also here representing the taxpayer, and we
3 shared the schedule that lists the \$2.3 million, the items
4 that make that up with DEP, but my contact was actually in
5 air pollution, so he exported that to the water pollution
6 folks and hopefully we will get something back within a
7 couple of weeks. I spoke with Dale, and if we don't, we'll
8 try to set up a meeting with them to try to get it
9 resolved, because we have a list of about a hundred pre-
10 approved items, and then you determine if it's already on
11 the pre-approved list or if they need to add something to
12 see if they agree that it's pollution control, but we are
13 working with the taxpayer.

14 MS. WARFIELD: If we don't have the
15 valuation by December 5th, is there any way it can be
16 adjusted if we do receive, if they do qualify?

17 MR. AMBURGEY: They can always -- the
18 Board has, there's a statute in place for exoneration to
19 correct an error, but hopefully we can have it resolved
20 before that meeting.

21 MR. DETTINGER: How do we deal with
22 purchases of qualified pollution control equipment mid-tax
23 year, if a ruling is given? That's sort of an analysis
24 situation?

1 MR. AMBURGEY: You mean if --

2 MR. DETTINGER: Let's say that the
3 taxpayer was three months down the road when they purchased
4 this equipment and obtained the necessary ruling from DEP
5 and sought this treatment from the property tax office,
6 would there be any consideration prior to setting assessed
7 value for the following tax year?

8 MR. AMBURGEY: Yes. As long as it got
9 approved by DEP, it would follow through, as long as it's
10 before the final date.

11 AUDITOR GAINER: Thank you. Next?

12 MR. STANLEY: I'm Matt Stanley,
13 President and CEO of Beckley Water Company, and also Doug
14 Ramsden, our CFO and Vice-President of Finance. Did
15 everyone receive a copy of our protest, our letter? Has
16 any decision been made relative to this, prior to us
17 presenting here?

18 AUDITOR GAINER: No, sir.

19 MR. STANLEY: Okay. If you would,
20 I'll go ahead and turn this over to Doug Ramsden.

21 MR. RAMSDEN: I appreciate the
22 opportunity. I don't know what my timeframe is, but I'll
23 try to be as brief as I can, but I have put together a
24 package of information.

1 AUDITOR GAINER: Please feel free to take
2 the time you feel necessary.

3 MR. RAMSDEN: Thank you very much. I
4 appreciate it. Included in my package, I started off by
5 providing the September 14th, 2011, letter from the State
6 Tax Commissioner, showing that our assessed value for
7 calendar year 2012 is \$17 million, and that's based on a
8 correlated appraised value of \$28,300,000. Behind that is
9 the advanced worksheets that were provided by the State Tax
10 Department on the valuations for Beckley Water Company, and
11 I would like to focus on the first page after the cover
12 letter that reflects the income approach for Beckley Water
13 Company.

14 I've highlighted the two pertinent numbers
15 that we are questioning. For the five-year net operating
16 income for Beckley Water Company, we have average \$990,000
17 per year for that five-year period, and you have asked --
18 and I don't know how it was arrived at, but the income
19 capitalized was increased by forty percent to \$1.4 million.
20 When you apply the capitalization rate of 7.73 percent, the
21 calculations provided have a net capitalized income of
22 \$17,500,000.

23 If you can skip the next two worksheets, I
24 have also included copies from our annual report that we

1 file with the Public Service Commission to reflect that
2 total operating income for each of the four preceding years
3 to validate the numbers that were included on the
4 worksheet.

5 I would like to point out that the operating
6 income that's utilized does not include the interest
7 expense of roughly a half million dollars per year for the
8 company. That may be standard procedure, but basing that
9 on a million dollars does not take into account our
10 operating costs or the interest costs that we incur every
11 year.

12 And skipping to the income approach
13 worksheet and spreadsheet that I prepared, I have gone
14 through and in our minds recalculated the income approach
15 and only capitalizing one million dollars versus the \$1.4
16 million calculation, and I arrived at a net capitalized
17 income of \$12,300,000. Applying the weighting that is
18 currently in place for Beckley Water Company, there was a
19 fifty percent weighting on the income approach and a fifty
20 percent weighting on the cost approach. This would result
21 in a correlated value of \$25,500,000 and assessed value of
22 \$15,200,000.

23 If you go to the next page, there are
24 selected taxpayers in the state of West Virginia that are

1 provided a different weighting, and if we were provided
2 that income approach at a hundred percent level, our
3 correlated value would drop down to \$12,300,000.

4 Skipping that page, we have hired a
5 consultant to help us with other entities in the state that
6 have the weighted average of the income and the cost
7 approaches, and you can see, even including West Virginia
8 American, a comparable company, they're six times the size
9 we are, but they are in the water business as we are,
10 providing our customers a safe, reliable product, they
11 received an allocation of sixty-nine percent weighting on
12 the income and thirty-one percent weighting on the cost.

13 So if we flip to the chart, I have
14 summarized it by saying the cost approach and the income
15 value approach for Beckley Water Company was currently
16 assessed at a correlated value of \$28,300,000. The two
17 other industries that are large taxpayers for the State of
18 West Virginia are listed as the second and third item,
19 coming down, applying the same weighting to Beckley Water
20 Company as you have applied to those other two, our
21 correlated value coming in at \$12,300,000, and I
22 respectfully request that the Board consider the valuation
23 provided, and I thank you for your time.

24 AUDITOR GAINER: Any questions from

1 members of the Board?

2 (No response.)

3 AUDITOR GAINER: Thank you, gentlemen.
4 Anyone else wishing to make a protest this morning? Also
5 let the record note that Secretary of Education Jorea
6 Marple is also in attendance. Or Superintendent of
7 Schools, I should say. Either demoted you or promoted you,
8 I'm not sure which.

9 SUPERINTENDENT MARPLE: Either one works.

10 AUDITOR GAINER: All right. We only have
11 one more item on the agenda before we recess this meeting
12 yet again, and that is to go into executive session to
13 discuss a pending legal matter for the Board. I would
14 entertain a motion to go into executive session.

15 MS. WARFIELD: So move.

16 AUDITOR GAINER: Do we have a second?

17 SECRETARY TENNANT: Second.

18 AUDITOR GAINER: Discussion? All in
19 favor, signify by saying aye.

20 (Ayes responded.)

21 AUDITOR GAINER: Opposed no.

22 (No response.)

23 AUDITOR GAINER: The ayes have it. I
24 would ask that Russ Rollyson from my staff stay in for

1 executive session. Thank you for coming.

2 (WHEREUPON, executive session
3 began at 10:17 and ended at
4 10:37 AM.)

5 AUDITOR GAINER: We'll go back on the
6 record. We just came out of executive session where we
7 discussed a legal issue with counsel to the Board. No
8 actions were taken. We have no further action, I believe,
9 on the agenda to take at this meeting, so I would entertain
10 a motion to recess this meeting until December the 5th.

11 MS. WARFIELD: Is that 10:00 AM as
12 well?

13 MS. LEWIS: Yes.

14 AUDITOR GAINER: I have a motion by Danny
15 Ellis and a second by Kurt Dettinger, and all in favor?

16 (Ayes responded.)

17

18 (WHEREUPON, the hearing was
19 recessed at 10:37 AM.)

20

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 8th day of
November, 2011.



Penny L. Kerns, CCR
Notary Public

My commission expires May 13, 2018.

