

# What's the Buzz?

Blending Net Book Value with RCNLD  
in the Assessment of 504 Utilities



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# What are “504 Utilities” ?



- Business personal property owned by regulated public utility companies:
  - used in the distribution of natural gas to customers; or
  - used in electric power transmission and distribution within each municipality.

# What are “504 Utilities” ?



- In FY2020, Class 504 Utility Personal Property had an Assessed Value of approximately \$18.3 Billion.
- That's approximately 47% of the total Personal Property Value in the Commonwealth.
- Largest Class of Personal Property by Value.



# The Basics of Assessing Personal Property

All property, real and personal, situated within the Commonwealth, and all personal property of the inhabitants of the Commonwealth wherever situated, unless expressly exempt, shall be subject to taxation...

MGL Chapter 59, Section 2



# The Basics of Assessing Personal Property

- Assessors are charged with making a “fair cash valuation” of property that is subject to taxation. G.L. c. 59, § 38.
- “fair cash value” means “fair market value,” or “the price an owner willing, but not under compulsion to sell, ought to receive from one willing, but not under compulsion, to buy.”  
Boston Gas Co. v. Assessors of Boston,  
334 Mass. 549 (1956).

# The DPU Carry-Over Rate Base Principle

- “if a regulated utility sells an asset to another regulated, public utility, the basis of that asset in the hands of the transferee remains the same as that of the transferor for rate-making purposes”.
- The “basis of the asset” is the value used by DPU as the “rate base” which is integral in determining the revenue that is permitted.

# The DPU Carry-Over Rate Base Principle

- the value of property included in the rate base is its net book value, which has been defined as “the original cost of the property at the time it was originally devoted to public use, less accrued depreciation.”

Tennessee Gas Pipeline v. Agawam

- However, Net Book Value is an accounting term, not assessing valuation term.



# The DPU Carry-Over Rate Base Principle

- DPU had a general policy of limiting the net book value of the assets in the hands of the buyer to the existing net book value in the hands of the seller.
- Any acquisition premium paid for the assets (the amount paid above net book value) would be excluded from the buyer's rate base, and so no DPU-specified rate of return on the premium.

# The DPU Carry-Over Rate Base Principle

- By doing this, the DPU believed that it was protecting the ratepayer.
- The SJC stated that the net book value of utility assets is the proper value for assessment purposes, absent “special circumstances” that would induce a buyer to pay more than net book value.

# The Impact of the DPU Rule

- The SJC's adoption of Net Book Value initially made sense since utilities were a heavily regulated monopolistic industry.
- However, in 1997 the General Court changed the local electric & gas energy markets forever.
- The intention of the change in law was to create a market that would be more competitive and thus more cost effective for consumers.



# Chapter 164 of the Acts of 1997

- Deregulated the energy industry by unbundling generation from distribution.
- It would now be possible to buy gas or electric from one entity and have it distributed or transmitted by another entity.
- This law also allowed deregulated utilities to enter into “alternate tax agreements” with municipalities.

# Regulatory Change

- As Deregulation progressed, utilities were able to successfully argue that by merging, they could create economies of scale and reduce redundant expenses.
- These cost reductions allowed utilities to pay above the net book value and still provide benefits to ratepayers in the form of lower or frozen rates.

# Regulatory Change

- The DPU formalized a shift in its policy with respect to the Carry-Over Rate Base principle in a 1994 order regarding mergers and acquisitions of utilities.
- Guidelines & Standards for Acquisitions & Mergers, stated that the DPU would “no longer follow the practice of denying acquisition premium recovery on a per se basis.”



# Regulatory Change

- It also provided that “[m]erger proposals that include an acquisition premium will henceforth be judged on a case-by-case basis.”
- The SJC acknowledged the DPU's regulatory change in *Stow Mun. Elec. Dep't v. Department of Pub. Utils.*, 426 Mass. 341, 347, 688 N.E.2d 1337 (1997).

# Regulatory Change

- In the Stow Case, the DPU had allowed a purchase price that was based on a 50/50 blend of Net Book Value and Reproduction Cost New Less Depreciation (RCNLD).
- The SJC affirmed the use of the blended rate acknowledging the DPU's shift from a mandatory Carry-Over Rate Base policy to a case-by-case approach.

# We Now Had a Special Circumstance

- The SJC had previously stated that “Special Circumstances” could include:
  - the applicable regulatory agency may change its policies and abandon the Carry-Over Rate Base Principle, thereby making an investment in the company more attractive; or
  - [t]he potential for growth in a utility's business.



# Boston Gas Co. v. Assessors of Boston

- In 2011, the SJC held that changes in the utility regulatory environment and other special circumstances justified the use of a valuation method other than “net book” and that the method used provided a reliable estimate of the fair cash value of the property.
- The method was a 50/50 Blend of Net Book Value and RCNLD.

# NSTAR Electric Co. v. Assessors of Boston

- In 2019, the Appeals Court upheld the ATB's Decision that Boston's use of a 50/50 blend of Net Book Value and RCNLD based on the existence of the Special Circumstance created by the DPU's Regulatory Change.
- The Appeals Court also based the decision on other Special Circumstances and testimony that including that net book value is an accounting entry and not a valuation method.

# DOR Local Finance Opinion 2019-1

- On March 26, 2019, DOR issued Local Finance Opinion 2019-1 that stated that:
  - DPU's regulatory policy eroded the presumption of net book value as the method of valuation for property tax purposes.
  - The Courts have viewed this change as a "Special Circumstance"

# DOR Local Finance Opinion 2019-1

- On March 26, 2019, DOR issued Local Finance Opinion 2019-1 that stated that:
  - Other Special Circumstances demonstrate that another valuation method was appropriate.
  - As a result, DOR would be accepting a method that gives equal weight to the property's Net Book Value and its RCNLD.

# WMECO v. Springfield

- On April 1, 2022, the Appeals Court upheld the ATB's Decision that Springfield's use of a 50/50 blend of Net Book Value and RCNLD was appropriate.
- DPU issued an "Amicus Letter" in which it tried to clarify the prior regulatory change as not allowing a buyer to earn a return on acquisition premium but to recover it in other ways, on a case by case basis.



# WMECO v. Springfield

- The Court did not put much weight in this clarification.
- It stated that putting aside the “nuances” of the DPU Regulatory Change, the SJC had rejected the argument that the DPU does not allow increase Net Book Value after acquisition.
- Once again a Court upheld the 50/50 Blended Rate – so why are we still discussing this?

# The Concept of “Legal Precedent”



## Binding Precedent

The reason for a decision of a higher court that must be followed by a lower court in the same court hierarchy.

## Persuasive Precedent

The reason for a decision of a another court that is not binding but relevant to a case and is an important statement of the law.

# The Concept of Binding Precedent

- ATB Decisions are not Binding Precedent, but rather they are Persuasive Precedent.
- The NSTAR & WMECO Appeals Court Decisions have been Rule 1:28 Decisions and so they are not Binding Precedent, but rather Persuasive Precedent.

# The Goal is to avoid Groundhog Day

- Hopkinton's Motion for Summary Judgment at the ATB.
- Hopkinton argued that this is a settled matter and that due to the Special Circumstances, the LFO, and the Eversource DPU filings that the 50/50 Blend is the correct valuation method.
- ATB Chairman DeFrancisco took matter under advisement.

The Goal is to avoid Groundhog Day

Discussion/  
Questions &  
Answers



# *Thank You!*



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