

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday, the 16th day of 2005

Gordonsville Energy, L.P., Appellant,
against

Record No. 050017
S.C.C. Case No. PST-2002-00046

State Corporation Commission, Appellee.

Upon an appeal of right from
an order entered by the
State Corporation Commission.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no error in the order from which this appeal is taken.

The State Corporation Commission (the Commission) assessed the value of the tangible personal property of Gordonsville Energy, L.P. (the company), subject to local taxation in Louisa County for the 2002 tax year, at \$151,853,164. The company applied to the Commission for review and correction of its 2002 assessment and offered expert testimony that the fair market value of its property subject to taxation in 2002 was \$54,414,000. The Commission concluded that the company had failed to carry its burden of proving that the assessment was erroneous and dismissed the company's application for review.

The company owned and operated an electric power generating plant in Louisa County that had been in operation since 1994. The plant had two combined-cycle electric/steam power generating units capable of producing 240 megawatts per hour. The plant relied on natural gas as its primary fuel, but could, and sometimes did, burn fuel oil as an alternative. The company sold electric power exclusively to Virginia Electric and Power Company (Vepco) pursuant to contracts under which the company would generate power only when Vepco ordered, or "dispatched" it. In practice, the company served Vepco as a supplier only in times of peak demand and high prices, and Vepco paid above-market rates for this capacity. Although built to operate at 80% to 90% of capacity, the plant had not operated at greater than 14% of its capacity during the preceding five years. The plant was also built to generate and sell steam to an adjacent water treatment plant. Although not very profitable, this capability qualified it as a cogeneration facility under federal regulations. Such "cogeneration" capability was required by the company's agreements with Vepco.

The Commission arrived at its valuation by adopting the original cost less depreciation method. The company reported the original cost of its tangible personal property as \$197.8 million. The Commission applied accumulated depreciation based upon standard tables of life expectancy of the various categories of tangible

personal property subject to taxation in arriving at its final assessed valuation of \$151,853,164. This methodology was approved by the Court in Norfolk & W. Ry. Co. v. Commonwealth, 211 Va. 692, 697-98, 700-701, 179 S.E.2d 623, 627 (1971).

The Commission's assessment is presumed correct and the burden is upon the owner of the property to show that it is erroneous, Norfolk & W. Ry. Co., 211 Va. at 695, 179 S.E.2d at 626. The Commission's findings are given great weight on appeal and will not be disturbed unless based on inherently incredible evidence or unless unsupported by the evidence. Winchester & W. R.R. Co. v. State Corp. Comm'n., 236 Va. 473, 476, 374 S.E.2d 66, 68 (1988).

The company's evidence consisted of the testimony of an expert witness. He testified that because there was no appropriate market data, he relied upon a cost-less-depreciation approach and an income approach. His cost approach was based upon the theoretical cost of a simple-cycle, gas-fired plant much less expensive to build and operate than the existing plant. His simple-cycle plant would have failed to qualify as a "cogeneration facility." His income approach was based upon assumptions concerning cash flow, gas supplies, demand for power, market prices and managerial skills having little relation to the realities of the case.

The Commission was not bound by the opinion of the expert witness and was entitled, under the circumstances, to disregard it

and to rely on its own methodology in arriving at its assessment. Accordingly, the decision of the State Corporation Commission is affirmed. The appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the State Corporation Commission.

A Copy,

Teste:

John L. Hamington |

Clerk