

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

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APPLICATION OF

WHEELABRATOR PORTSMOUTH, INC.

CASE NO. PST-2017-00022

For review and correction of  
assessment of the value of property  
subject to local taxation – Tax Year 2017

FINAL ORDER

Wheelabrator Portsmouth, Inc. ("Wheelabrator" or "Company"), filed with the State Corporation Commission ("Commission") on November 13, 2017, an application for review and correction ("Application") of the assessment of certain property subject to local taxation for Tax Year 2017 by the Commission pursuant to Chapter 26 of Title 58.1 of the Code of Virginia ("Code").<sup>1</sup> Wheelabrator owns and operates a waste-to-energy cogeneration plant located at 3809 Elm Avenue, Portsmouth, Virginia 23704 ("Portsmouth Facility").<sup>2</sup> Wheelabrator asserts that the Commission's assessed value<sup>3</sup> of the Portsmouth Facility as of January 1, 2017, failed to account fairly and fully for physical depreciation, functional obsolescence, and economic obsolescence; exceeds fair market value; and violates Section 2 of Article X of the Constitution of Virginia.<sup>4</sup>

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<sup>1</sup> Code § 58.1-2600 *et seq.*

<sup>2</sup> Ex. 1 (Application) at 1.

<sup>3</sup> See *In the matter of: The assessment of Water, Heat, Light, and Power Corporations; Electric Suppliers; Pipeline Distribution Companies; and Telecommunications Companies for the 2017 Tax Year*, Matter No. PST-2017-00014, Doc. Con. Cen. No. 170910174, Assessment Order (Sept. 11, 2017).

<sup>4</sup> Ex. 1 (Application) at 2.

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On February 14, 2018, the Commission issued an Order for Notice and Hearing ("Procedural Order" or "Scheduling Order") in which the Commission, among other things: docketed the Application; directed notice of the Application to the City of Portsmouth ("Portsmouth"); directed Wheelabrator to file testimony and exhibits by which the Company expects to establish its case; provided an opportunity for interested persons to participate; directed the Commission's Staff ("Staff") to investigate the Application and file testimony and exhibits thereon; scheduled a public hearing; and appointed a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission and to file a report.

On March 23, 2018, Portsmouth filed a notice of participation.

On May 22, 2018, the Hearing Examiner issued a ruling modifying the procedural schedule at the request of Wheelabrator for additional time to fully prepare the testimony and exhibits that the Company required to establish its case. Among other things, the public hearing was rescheduled from October 24, 2018, to March 12, 2019. The Hearing Examiner further granted all participants, including Wheelabrator, additional time to file testimony and exhibits. On February 4, 2019, the Hearing Examiner, through a subsequent ruling and in response to a Staff motion, rescheduled the hearing again from March 12, 2019, to May 7, 2019.

On August 8 and 10, 2018, Wheelabrator filed its direct testimony and exhibits.<sup>5</sup> Wheelabrator filed the testimony of six witnesses, including its MR Valuation Consulting Report ("MRV Report"). On October 22 and 23, 2018, Portsmouth filed its testimony and exhibits

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<sup>5</sup> Wheelabrator filed an uncontested Motion for Modification of Scheduling Order, which was granted by Hearing Examiner's Ruling dated August 13, 2018. The Hearing Examiner's Ruling extended again the time for filing not only Wheelabrator's direct testimony and exhibits, but the filing deadlines for Portsmouth and Staff to file their testimony and exhibits, and for Wheelabrator to file its rebuttal testimony.

addressing the valuation of the Portsmouth Facility.<sup>6</sup> On December 19, 2018, Staff filed its testimony and exhibits.<sup>7</sup> Staff's testimony addressed the history and consistency of its tax assessments of electric suppliers, including the methodology used to derive the fair market value of the Portsmouth Facility. Staff also filed the testimony of an independent consultant, Mr. Howard Lubow, of Overland Consulting, L.L.C. ("Overland"), who was retained by Staff to develop an independent appraisal and analysis of the fair market value of the Portsmouth Facility and to address the MRV Report. The results of Overland's analysis are contained in the Overland Report. On February 28, 2019, Wheelabrator filed its rebuttal testimony.<sup>8</sup> Wheelabrator filed the rebuttal testimony of five witnesses who responded to the testimony of Portsmouth and Staff.

On May 7, 2019, the Hearing Examiner convened an evidentiary hearing on the Application. Wheelabrator, Portsmouth, and Staff participated at the hearing. No public witnesses testified at the hearing.<sup>9</sup>

On July 10, 2019, Wheelabrator, Portsmouth, and Staff filed Post-Hearing Briefs. Concurrent with the filing of its Post-Hearing Brief, Portsmouth filed its Respondent City of Portsmouth's Motion to Strike ("Portsmouth Motion"), which renewed Portsmouth's motion to

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<sup>6</sup> Portsmouth filed two uncontested agreed motions to revise procedural date, which were granted by Hearing Examiner Rulings dated October 5, 2018, and October 23, 2018. Portsmouth filed the testimony of three witnesses, but at the hearing Portsmouth moved to withdraw the testimony of one of its witnesses, David H. Cole. The Hearing Examiner granted the request, and all testimony and cross-references to the withdrawn witness' testimony were stricken. *See* Tr. 286-287.

<sup>7</sup> The Staff filed an uncontested Motion for an Extension of Time to file Staff Testimony and to Amend Procedural Schedule, which was granted by Hearing Examiner Ruling dated December 7, 2018. Through this Ruling, the Hearing Examiner again extended the time for filing not only Staff testimony, but rebuttal testimony as well.

<sup>8</sup> Wheelabrator filed a Motion for Modification of Scheduling Order and Further Extension of Time to File Rebuttal Witness Summaries and Exhibits, which was granted by Hearing Examiner Ruling dated February 25, 2019.

<sup>9</sup> Tr. 5-6.

strike the MRV Report (initially made at the hearing) on the basis that that the MRV Report and testimony in support of the MRV Report are based on erroneous facts.<sup>10</sup> On July 24, 2019, Wheelabrator filed its Response in Opposition to the City of Portsmouth's Motion to Strike the Testimony of Wheelabrator's Expert Witnesses ("Response"), in which Wheelabrator incorporated by reference its arguments and facts set forth in its Post-Hearing Brief, as well as testimony and arguments submitted into evidence at the hearing in this matter.<sup>11</sup> On August 5, 2019, Portsmouth filed a Reply to Wheelabrator's Response. Portsmouth maintained that the MRV Report and supporting testimony "are founded on an erroneous factual foundation because they ignore information that was known or knowable as of the date of valuation, and assume facts which were not true. Therefore, this testimony and evidence is inadmissible and should be struck."<sup>12</sup>

In its Post-Hearing Brief, Wheelabrator renewed its motion to strike the testimony of Staff witness Lubow (initially made at the hearing) ("Wheelabrator Motion") on the basis that Mr. Lubow did not perform an actual property appraisal, he is not licensed as an appraiser, and he does not hold any certificate from any appraisal bodies.<sup>13</sup> Staff responded to the Wheelabrator Motion at the hearing and in Staff's Post-Hearing Brief.<sup>14</sup>

On November 8, 2019, the Hearing Examiner issued the Report of Michael D. Thomas, Senior Hearing Examiner ("Report"). In his Report, the Hearing Examiner summarized the

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<sup>10</sup> See, e.g., Portsmouth Motion to Strike at 2; Tr. 38-40, 44, 52, 574.

<sup>11</sup> See Wheelabrator Response at 2.

<sup>12</sup> Portsmouth Reply at 5.

<sup>13</sup> See, e.g., Wheelabrator Post-Hearing Brief at 29; Tr. 437-438, 469, 571-572.

<sup>14</sup> See Tr. 438; Staff Post-Hearing Brief at 21-29.

record in this matter and made certain findings and recommendations for the Commission. The Hearing Examiner recommended granting the Portsmouth Motion, striking the MRV Report and supporting testimony from the record in this matter.<sup>15</sup>

The Hearing Examiner recommended denying the Wheelabrator Motion and admitting the testimony of Mr. Lubow, based in part on the recent Supreme Court of Virginia case, *Va. Int'l Gateway, Inc. v. City of Portsmouth*, where the Court found that:

a trial court may qualify a person as an expert witness to testify regarding the value of real estate without regard to his or her Virginia licensure status. It did not, however, render licensure status irrelevant. Licensure remains an important consideration in assessing a prospective expert's qualifications. Code § 54.1-2010 (B) stands only for the proposition that a trial court cannot refuse to qualify an otherwise appropriate expert solely for the lack of an active Virginia license at trial.<sup>16</sup>

The Hearing Examiner recommended that the Commission accept Staff's determination of the fair market value of the Portsmouth Facility in the Overland Report, affirm Staff's assessment of the Portsmouth Facility for the 2017 Tax Year, and dismiss Wheelabrator's Application.<sup>17</sup> The Hearing Examiner recommended that even if the Commission does not grant Portsmouth's Motion, the Commission should still affirm Staff's assessment of the Portsmouth Facility for the 2017 Tax Year and dismiss Wheelabrator's Application because the MRV Report is not credible.<sup>18</sup> The Hearing Examiner recommended the Commission rely instead on the Overland Report to establish that the fair market value of the Portsmouth Facility exceeds the

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<sup>15</sup> Report at 51-55, 69.

<sup>16</sup> *Id.* at 55-62, 69; *Va. Int'l Gateway, Inc.*, Sup. Ct. of Va. Rec. No. 180810, Opinion at 6 (Oct. 31, 2019).

<sup>17</sup> Report at 69.

<sup>18</sup> *Id.* at 65.

amount of the assessment determined by Staff; therefore, no adjustment to the amount of the assessment is warranted.<sup>19</sup>

On December 2, 2019, Wheelabrator filed objections to the Hearing Examiner's Report. Wheelabrator objected to the Hearing Examiner's finding that the testimony of Staff witness Lubow be admitted, and that Wheelabrator's Application be denied, on the basis that the Hearing Examiner's recommendations ignore controlling Supreme Court of Virginia precedent and misapply the facts of this case.<sup>20</sup> Wheelabrator asked that its Application be granted and that the Commission adjust the 2017 assessment, with interest, costs and other relief to make it whole.<sup>21</sup> Also on December 2, 2019, the Staff and Portsmouth filed comments in support of the Hearing Examiner's Report.

NOW THE COMMISSION, having considered all of the evidence in this matter pursuant to the Constitution of Virginia and the applicable statutes and law, is of the opinion and finds that Wheelabrator has not shown that the Commission's assessment of its property for Tax Year 2017 was erroneous.<sup>22</sup> Accordingly, we deny Wheelabrator's Application.

#### *Applicable Law*

##### The Virginia Constitution

The Virginia Constitution mandates two principles of property taxation.

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<sup>19</sup> *Id.*

<sup>20</sup> *See, e.g.,* Wheelabrator Objections to Report at 1.

<sup>21</sup> *See, e.g., id.* at 17.

<sup>22</sup> We deny the Portsmouth Motion and the Wheelabrator Motion to strike evidence in this matter. Rather, we admit all of the expert testimony submitted in this proceeding and give it the proper weight due.

Article X, Section 1, provides in part:

All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax . . . .

Article X, Section 2 provides in part:

All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law.

The Virginia Supreme Court has explained that "[t]he dominant purpose of these provisions is to distribute the burden of taxation, as far as is practical, evenly and equitably. If it is impractical or impossible to enforce both the standard[s] . . . , the latter provision is to be preferred as the just and ultimate end to be attained."<sup>23</sup>

The Code of Virginia

Title 58.1 of the Code prescribes the authority and obligation of the Commission to centrally assess the value of real and personal property of electric suppliers,<sup>24</sup> such as Wheelabrator, for tax purposes.

Code § 58.1-2600 states, in relevant part:

[the Commission] is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency responsible for the assessment of the real and personal property of all public service corporations, except those public service corporations for which the Department of Taxation is so designated, upon which the Commonwealth levies a license tax measured by the gross receipts of such corporations. The State Corporation Commission shall also assess the property of . . . every public service corporation in the Commonwealth in the business of

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<sup>23</sup> *Smith v. City of Covington*, 205 Va. 104, 108 (1964) (citing *Norfolk v. Snyder*, 161 Va. 288 (1933); *Lehigh Portland Cement Co. v. Commonwealth*, 146 Va. 146 (1926)). See also, e.g., *Bd. of Supervisors of Fairfax Cnty v. Telecomms. Indus., Inc.*, 246 Va. 472, 477 (1993) (citing *R. Cross, Inc. v. City of Newport News*, 217 Va. 202, 207 (1976) (quoting *Skyline Swannanoa, Inc. v. Nelson Cnty*, 186 Va. 878, 881 (1947))); *Bd. of Supervisors of Fairfax Cnty v. Leasco Realty, Inc.*, 221 Va. 158, 166 (1980).

<sup>24</sup> Wheelabrator is an electric supplier as defined by Code § 58.1-2600.

furnishing heat, light and power by means of electricity, and each electric supplier, as provided by this chapter.

The Code requires each electric supplier to report all of its real and tangible property annually to the Commission. Code § 58.1-2628 D states, in relevant part:

Every electric supplier as defined in § 58.1-2600 shall report annually, on April 15, to the Commission all real and tangible personal property owned by such electric supplier, leased by such electric supplier for a term greater than one year, or operated by such electric supplier in the Commonwealth and used directly for the generation, transmission or distribution of electricity for sale as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located, unless reported to the Commission by another corporation or electric supplier in the Commonwealth in the business of furnishing heat, light and power by means of electricity. Real and tangible personal property of every description in the Commonwealth leased by such electric supplier for a term greater than one year or operated by such electric supplier shall mean only those assets directly associated with production facilities and shall not mean real estate or vehicles. The report shall also show the total gross receipts less sales to federal, state and local governments for their own use.

The Commission then assesses the value of the reported property. Code § 58.1-2633 A provides, in relevant part:

The Commission shall assess the value of the reported property subject to local taxation of each . . . electric supplier, . . . , and shall assess the license tax levied hereon if such company is subject to the license tax under this article.

The right of an electric supplier to contest a Commission tax assessment is derived from the Code. Code §58.1-2670 states, in relevant part:

Any taxpayer, the Commonwealth or any county, city or town aggrieved by any action of the Commission in the ascertainment of, or the assessment for taxation of, the value of any property of any corporation or company assessed by the Commission, or in the ascertainment of any tax upon any company or corporation of its property, at any time within three months after receiving a certified copy of such assessment of value or tax, may apply to the



Commission for a review and correction of any specified item or items thereof after which date the Commission shall have no authority under this section or any other provision of law to receive any application or complaint concerning the assessment of value or tax. Such application shall be in a form prescribed by the Commission and shall set forth with reasonable certainty the item or items, of which a review and correction are sought, and the grounds of the complaint. The application shall also be verified by affidavit.

Should an electric supplier contest an assessment, the Commission must hear testimony and consider evidence on the matter and notify all affected localities. Code § 58.1-2671 states, in relevant part:

Upon the filing of any such application, the Commission shall fix a time and place at which it will hear such testimony with reference thereto as any of the parties may desire to introduce and the applicant shall cause a copy of the application and notice of the time and place of the hearing to be served upon the company or corporation or the Commonwealth and each county, city and town whose revenue is, or may be, affected thereby, at least ten days prior to the day set for the hearing.

Finally, the Commission must adjust the tax if it finds the assessment is excessive or insufficient. Code § 58.1-2673 states, in part:

If, from the evidence introduced at such hearing or its own investigations, the Commission is of opinion that the assessment or tax is excessive, it shall reduce the same or if it is insufficient, it shall increase the same. If the decision of the Commission is in favor of the taxpayer, in whole or in part, appropriate relief shall be granted, including the right to recover from the Commonwealth or local authorities, or both, as the case may be, any excess of taxes that may have been paid. The order of the Commission shall be enforced by mandamus, or other proper process, issuing from the Commission.

### The Standard of Review

While the Code prescribes the authority of an electric supplier, such as Wheelabrator, to contest a Commission assessment, the Code does not expressly establish the standard of review

for such actions. Notwithstanding, the applicable law is familiar. "The Commission's assessment is presumed correct and the burden is upon the owner of property to show that it is erroneous." *Gordonsville Energy, L.P. v. State Corp. Comm'n*, Sup. Ct. of Va. Rec. No. 050017, Opinion (2005) (citing *Norfolk & W. Ry. Co.*, 211 Va. at 695 (1971)). "The effect of th[e] presumption is that even if the assessor is unable to come forward with evidence to prove the correctness of the assessment this does not impeach it since the taxpayer has the burden of proving the assessment erroneous." *Norfolk & W. Ry. Co.*, 211 Va. at 695 (1971); see also *Fruit Growers Express Co. v. City of Alexandria*, 216 Va. 602, 610 (1976) (citations omitted). Further, "values are matters of opinion to which no rule of thumb can be applied. Before the valuation fixed by [the Commission] can be lowered by the court, the taxpayer must carry the burden of proving that the property in question is assessed at more than its fair market value . . . ." *Skyline Swannanoa, Inc.*, 186 Va. at 885 (1947).

The Virginia Supreme Court has defined "fair market value" as the "sale price when offered for sale 'by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it.'" *Keswick Club v. Cnty of Albemarle*, 273 Va. 128, 136 (2007) (quoting *Tuckahoe Women's Club v. City of Richmond*, 199 Va. 734, 737 (1958)). The Court has also recognized that when assessing fair market value, the property is valued according to its highest and best use. *Shoosmith Bros. v. Cnty. of Chesterfield*, 268 Va. 241, 246 (2004) (citing *Norfolk & W. Ry. Co.*, 211 Va. at 699 (1971)). The Court has recognized that the assessment of property is not an exact science; valuing land, buildings and tangible personal property is dependent on many factors; experts disagree on the best method to establish fair market value. See *Southern Ry. Co. v. Commonwealth*, 211 Va. 210, 214 (1970); *Richmond, Fredericksburg & Potomac R.R. v. State Corp. Comm.*, 219 Va. 301, 313 (1978); see also *City of Richmond v.*

*Gordon*, 224 Va. 103, 112 (1982). The Court has recognized, however, that the cost, income, and sales methods are the three valuation methods most widely used to assess fair market value. *Keswick Club*, 273 Va. at 137 (2007). The Court and this Commission have recognized and upheld the use of a cost less depreciation approach to valuing the property of public service companies. *See, e.g., Gordonsville Energy, L.P.*, Sup. Ct. of Va. Rec. No. 050017, Opinion (2005); *Norfolk & W. Ry. Co.*, 211 Va. at 697-98, 700-701 (1971) (citations omitted).

### *Background*

#### The Portsmouth Facility

The Portsmouth Facility is a waste-to-energy facility that is actually composed of two separate facilities, separated by a public road.<sup>25</sup> On one side sits the refuse-derived fuel facility where the waste materials are delivered by truck to a large processing area where they are sorted.<sup>26</sup> When the process is complete, the waste materials are conveyed across the road to the power generation plant.<sup>27</sup> The United States Navy owns the land upon which the Portsmouth Facility sits.<sup>28</sup> Wheelabrator owns an easement that permits use of the ground for purposes of operating the plant, and two other small parcels containing the conveyor system between the two facilities.<sup>29</sup> Inside the power plant, the waste materials are transferred into large boilers, which burn the waste material.<sup>30</sup> The heat from the boilers is used to create steam, a certain amount of

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<sup>25</sup> *See, e.g.,* Ex. 62 (Johnson Direct) at 4.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *See, e.g., id.* at 4-5; Ex. 71 (Rodriguez Direct) at 4-5.

<sup>29</sup> *See, e.g.,* Ex. 62 (Johnson Direct) at 5; Ex. 71 (Rodriguez Direct) at 5.

<sup>30</sup> *See, e.g.,* Ex. 62 (Johnson Direct) at 4; Ex. 71 (Rodriguez Direct) at 6.

which is conveyed next door to the Naval Shipyard pursuant to a steam purchase contract between Wheelabrator and the United States Navy.<sup>31</sup> This steam permits the Navy to meet the Federal mandate that the Navy attempt to produce or procure 25% of its energy needs from renewable resources.<sup>32</sup> The remainder of the steam is used to run turbines, which generate electricity.<sup>33</sup>

The Portsmouth Facility generates revenue in four ways. First, Wheelabrator is paid tipping fees on a per-ton basis by the waste haulers that dump the waste at the plant. This makes up the majority of the Portsmouth Facility's revenue.<sup>34</sup> Second, Wheelabrator is paid by the United States Navy for steam.<sup>35</sup> Third, Wheelabrator is paid for electricity and capacity it sells into the PJM Interconnection, L.L.C.<sup>36</sup> Fourth, Wheelabrator receives a small amount of revenue from selling the ferrous and non-ferrous metal that it collects out of the ash byproduct of the waste that is burned in the boilers.<sup>37</sup>

As of January 1, 2017, the assessment date, Wheelabrator was a party to a contract that is at the crux of Wheelabrator's case. The contract at issue is one with the Southeastern Public Service Authority ("SPSA") for residential waste that was set to expire January 24, 2018.<sup>38</sup> Loss

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<sup>31</sup> See, e.g., Ex. 62 (Johnson Direct) at 4; Ex. 71 (Rodriguez Direct) at 6.

<sup>32</sup> See, e.g., Ex. 82 (Trimyer) at 8, EKT-4, EKT-5; Tr. 288; Portsmouth Post-Hearing Brief at 12.

<sup>33</sup> See, e.g., Ex. 62 (Johnson Direct) at 4.

<sup>34</sup> See, e.g., *id.* at 5; Wheelabrator Post-Hearing Brief at 8.

<sup>35</sup> See, e.g., Ex. 62 (Johnson Direct) at 5; Wheelabrator Post-Hearing Brief at 8.

<sup>36</sup> Ex. 62 (Johnson Direct) at 5.

<sup>37</sup> *Id.*

<sup>38</sup> See, e.g., Ex. 30 (Refuse Derived Fuels and Waste to Energy Facilities Services Agreement between SPSA and Wheelabrator Technologies, dated 9/9/09). See also, e.g., Ex. 62 (Johnson Direct) at 5; Ex. 78 (Johnson Rebuttal) at 4.

of this contract without replacement, according to Wheelabrator, would cause the Portsmouth Facility's tipping fee revenue to fall from \$34,529,000 in 2017 to \$9,102,020 in 2018.<sup>39</sup> It would cause significant decreases in electricity revenue to approximately one-third of the revenues earned during the contract period.<sup>40</sup> It would also cause decreases in the Portsmouth Facility's metals revenue, because the amount of metal byproduct Wheelabrator is able to sell is directly related to the amount of waste collected and burned at the Portsmouth Facility.<sup>41</sup>

Ownership History of the Portsmouth Facility

The Portsmouth Facility was built and owned by the United States Navy to provide steam to the Norfolk Naval Shipyard in Portsmouth.<sup>42</sup> In 1999, the Navy transferred ownership of the Portsmouth Facility to SPSA.<sup>43</sup> Notwithstanding, the Navy continued to receive the steam it required from the Portsmouth Facility under a long-term purchase agreement.<sup>44</sup> In 2010, Waste Management, Inc., through its then-subsiidiary Wheelabrator Technologies, Inc. ("WTI") (Wheelabrator's parent company), bought the Portsmouth Facility from SPSA for \$150 million.<sup>45</sup> In 2014, Energy Capital Partners acquired WTI, including the Portsmouth Facility.<sup>46</sup>

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<sup>39</sup> Ex. 62 (Johnson Direct) at 6.

<sup>40</sup> See, e.g., *id.*; Tr. 186.

<sup>41</sup> See, e.g., Ex. 62 (Johnson Direct) at 6; Tr. 186.

<sup>42</sup> See, e.g., Ex. 62 (Johnson Direct) at 3; Ex. 71 (Rodriguez Direct) at 5; Ex. 82 (Trimyer) at 5; Portsmouth Post-Hearing Brief at 9-10.

<sup>43</sup> See, e.g., Ex. 62 (Johnson Direct) at 3; Ex. 71 (Rodriguez Direct) at 5.

<sup>44</sup> See, e.g., Ex. 71 (Rodriguez Direct) at 5; Portsmouth Post-Hearing Brief at 11-12.

<sup>45</sup> See, e.g., Ex. 71 (Rodriguez Direct) at 5.

<sup>46</sup> See, e.g., Ex.76 (Baldoni Direct) at 16, Tr. 213.

### Tax Assessment of the Portsmouth Facility

Staff assessed the Portsmouth Facility for the 2017 Tax Year on January 1, 2017, at a total value of \$132,158,434, less pollution control equipment not subject to taxation of \$36,116,548, for a total value subject to taxation of \$96,041,886.<sup>47</sup>

Wheelabrator asserts that the fair market value of the Portsmouth Facility on January 1, 2017, should have been \$21,650,000, less equipment not subject to taxation of \$6,250,000, for a total value subject to taxation of \$15,400,000.<sup>48</sup>

### Wheelabrator's Challenge

Wheelabrator asserts that the Staff valued the Portsmouth Facility in excess of fair market value because Staff relied on facts not known or knowable as of January 1, 2017, failing to take into account market conditions or the reality of the SPSA residential waste contract in effect on that date.<sup>49</sup> Wheelabrator also asserts Overland miscalculated the fair market value of the Portsmouth Facility in the Overland Report by, among other things, valuing the facility as part of WTI's overall business rather than by consideration of the property in its "particular location."<sup>50</sup> Further, Wheelabrator asserts that the assessed value fails to recognize any economic or functional obsolescence related to parts of the plant that are not being used as originally designed because the plant no longer burns coal.<sup>51</sup> Wheelabrator asserts that one can look no further than January 1, 2017, to determine what was known and knowable on the assessment date, or risk

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<sup>47</sup> Ex. 92 (Holloway) at 9, JEH-8.

<sup>48</sup> See, e.g., Ex. 58 (MRV Report) at Table 1, page 60; Ex. 92 (Holloway) at JEH-12.

<sup>49</sup> See, e.g., Wheelabrator Post-Hearing Brief at 2, 21.

<sup>50</sup> See, e.g., *id.* at 2.

<sup>51</sup> See, e.g., Wheelabrator Post-Hearing Brief at 24; Wheelabrator Objections to Report at 16.

being in contravention of the Uniform Standards of Appraisal Practice ("USPAP") and applicable law.<sup>52</sup> Wheelabrator argues that any proper calculation of fair market value must take into account that on January 1, 2017, it was fact that the Portsmouth Facility was slated to lose revenue beginning in 2018, due to the loss of the SPSA residential waste contract, and would not be profitable after 2022, regardless of the future renewal of the United States Navy steam contract.<sup>53</sup> This "factual reality", as described by Wheelabrator, assumes the highest and best use of the Portsmouth Facility is as a greenfield, returned to the United States Navy.<sup>54</sup> This highest and best use assumption underlies every one of Wheelabrator's methods (the cost, income and sales approaches) for calculating fair market value in this case.<sup>55</sup>

#### Staff's Original Acquisition Cost Less Depreciation Approach

Per Code § 58.1-2628 D, all electric suppliers, including Wheelabrator, are required to file their annual tax report by April 15 of each year with all of the supplier's real and tangible personal property owned at original acquisition cost plus additions and retirements. Staff assesses each electric supplier based on the original acquisition cost information contained in its annual tax report.<sup>56</sup> Staff used Wheelabrator's annual tax report data to calculate fair market value of the Portsmouth Facility using the original acquisition cost less depreciation method as it

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<sup>52</sup> See Wheelabrator Post-Hearing Brief.

<sup>53</sup> *Id.* at 29.

<sup>54</sup> See, e.g., *id.* at 12, 29 ("Wheelabrator has appropriately taken this *factual reality* into account in presenting its evidence of fair market value as of the assessment date, January 1, 2017." (emphasis added)).

<sup>55</sup> See, e.g., Wheelabrator Post-Hearing Brief at 12, 29; Ex. 58 (MRV Report). Wheelabrator rejected the results of its market approach to determine the fair market value of the Portsmouth Facility because of insufficient data but nonetheless found the results informative. See, e.g., Tr. 148-149, 165-168, 204.

<sup>56</sup> See, e.g., Ex. 92 (Holloway) at 2-4.

has every year for Wheelabrator, since 2011.<sup>57</sup> Staff derived the building and improvement values for the Portsmouth Facility differently because there were no original acquisition costs associated with the structures in Wheelabrator's tax report.<sup>58</sup> Staff instead conducted its fair market value appraisals for the buildings and improvements using the Marshall & Swift Valuation Service to develop a Replacement Cost New Less Depreciation appraisal of the Portsmouth Facility buildings.<sup>59</sup> Staff also valued two parcels of land totaling 1.0995 acres that are owned by Wheelabrator using information collected from the City of Portsmouth's Real Estate Assessor's Office.<sup>60</sup> The final step in Staff's methodology was to apply the local assessment ratio, per the requirements of Code § 58.1-2604, which was 100 percent for the City of Portsmouth for Tax Year 2017, to all property with the exception of land.<sup>61</sup>

Staff hired independent consultant, Howard Lubow of Overland, to review the MRV Report and conduct an independent valuation of the Portsmouth Facility. Staff witness Lubow criticizes the MRV Report both for its assumptions and its methodology. The Overland Report values the Portsmouth Facility giving equal weight to the results of its three approaches (cost, income and sales approaches).<sup>62</sup> The Overland Report concludes that the Portsmouth Facility

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<sup>57</sup> See, e.g., *id.* at 4; Staff Post-Hearing Brief at 14-18.

<sup>58</sup> See, e.g., Ex. 92 (Holloway) at 5.

<sup>59</sup> See, e.g., *id.* at 4-5; Ex. 93 (Goodwyn) at 2.

<sup>60</sup> See, e.g., Ex. 93 (Goodwyn) at 9-10.

<sup>61</sup> See, e.g., Ex. 92 (Holloway) at 9.

<sup>62</sup> See, e.g., Staff Post-Hearing Brief at 20; Ex. 94 (Lubow) at 5, Attachment 1, p. 1-12 to 1-16.



has a fair market value, as of January 1, 2017, of \$134.0 million before reduction of tax-exempt pollution control equipment.<sup>63</sup>

### *Discussion*

Staff assessed the Portsmouth Facility uniformly and in accordance with its proper highest and best use to determine its fair market value, consistent with the applicable law.

We begin with the Staff's uniform methodology. Staff assessed the Portsmouth Facility using the original cost less depreciation methodology. Staff has used the cost less depreciation methodology to assess the property of more than 300 utility companies for decades.<sup>64</sup> During the time, the Commission has upheld the methodology consistently<sup>65</sup> and the Court has upheld this methodology on at least three occasions. *See, e.g., Norfolk & W. Ry. Co.*, 211 Va. at 692 (1971); *Lake Monticello Service Co. v. Bd. of Supervisors of Fluvanna Cnty.*, 233 Va. 111 (1987); *Gordonsville Energy L.P.*, Va. Sup. Ct. Rec. No. 050017, Opinion (2005). Specifically, with respect to generation facilities such as the Portsmouth Facility, the Court has recognized:

The valuation and assessment of [public service corporation] properties under the fair market value standard of [Art. X, § 2] of the Constitution present a difficult problem because ... [public service corporations] are seldom sold so there are no comparable sales available to the Commission to assist it in arriving at its valuations. *In the absence of such comparable sales, which would be the best and fairest standard for fixing fair market values*, it is necessary for the Commission to arrive at a judgment on fair

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<sup>63</sup> *See, e.g.*, Staff Post-Hearing Brief at 20; Ex. 94 (Lubow) at 5, Attachment 1, p. 1-12 to 1-16.

<sup>64</sup> *See, e.g.*, Ex. 92 (Holloway) at 4.

<sup>65</sup> *See, e.g., Application of Gordonsville Energy, L.P., Application for review and correction of assessment of the value of property subject to local taxation-Tax Year 2002*, 2004 S.C.C. Ann. Rept. 172, Case No. PST-2002-00046, Final Order (2004); *Application of Gordonsville Energy, L.P., Application for review and correction of assessment of the value of property subject to local taxation-Tax Year 2002*, 2004 S.C.C. Ann. Rept. 173, Case No. PST-2002-00046, Opinion (2004); *Application of Hopewell Cogeneration Limited Partnership, Application for review and correction of assessment of the value of property subject to local taxation - Tax Year 2003*, 2006 S.C.C. Ann. Rept. 172, Case No. PST-2003-00065, Final Order (2006).

market value of the [public service corporation] properties on the basis of the other indicia of fair market value available to it.

*Lake Monticello Service Co.*, 233 Va. at 115-16, 353 S.E.2d at 770 (1987) (quoting *Norfolk & W. Ry. Co.*, 211 Va. at 697 (1971)(emphasis in original)).

The Staff did not apply this methodology blindly. First, to establish fair market value, Staff assessed all tangible property at its highest and best use, consistent with the applicable law. *Norfolk & W. Ry. Co.*, 211 Va. at 699 (1971); *see also Shoosmith Bros., Inc.*, 268 Va. at 246 (2004). The record establishes that the highest and best use of the Portsmouth Facility is as a waste-to-energy facility.<sup>66</sup> The Staff has assessed the Portsmouth Facility as it is actually being used since it first became subject to taxation in 2011.<sup>67</sup> On January 1, 2017, the Portsmouth Facility was still being operated in the same manner that it had been operated in the past, and would continue to be operated at least through the remainder of the questioned SPSA contract, through January 24, 2018.<sup>68</sup>

Consistent with the applicable law, the Staff also considered any and all facts that may affect the Staff's valuation of fair market value. Code § 58.1-2633 B provides that "the Commission shall assess the value of the property of such person, and its gross receipts upon the

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<sup>66</sup> The Portsmouth Facility has been operated as a waste-to-energy facility since it was built by the Navy in the 1980s. While the ownership of the Portsmouth Facility has changed over the years, its owners have continued to operate the facility as a waste-to-energy facility. The Portsmouth Facility continues to operate as a waste-to-energy facility today. *See, e.g.*, Ex. 62 (Johnson) at 1-2; Portsmouth Post-Hearing Brief at 9-12.

<sup>67</sup> *See, e.g.*, Ex. 92 (Holloway) at 4-9; Tr. 396.

<sup>68</sup> *See, e.g.*, Staff Post-Hearing Brief at 16; Tr. 396. It is uncontested that on January 1, 2017, Wheelabrator's contract with SPSA for residential waste was still in effect and would remain in effect until at least January 24, 2018, at which time the contract would expire. *See, e.g.*, Ex. 30 (Wheelabrator/SPSA Contract); Ex. 62 (Johnson Direct) at 5; Ex. 78 (Johnson Rebuttal) at 4. The SPSA/RePower L.L.C. contract recognizes the remaining term of the SPSA/Wheelabrator contract, "WHEREAS, SPSA is subject to an existing contract for disposal and processing of residential Solid Waste generated by its Member Communities at the Wheelabrator Portsmouth waste-to-energy facility, which contract expires at midnight on January 24, 2018." *See* Ex. 84 (SPSA/RePower Contract). On the January 1, 2017 assessment date, the Portsmouth Facility's operations were expected to continue as they had before for the entire 2017 Tax Year. *See, e.g.*, Tr. 396. No party in this case asserts otherwise.

best and most reliable information that can be obtained by the Commission." As Staff witness Holloway explained, sometimes electric companies the Staff has assessed have had events that affected the value of the property, such as shutdowns or plants being put into cold storage, where Staff made an adjustment to value to reflect those events.<sup>69</sup> However, the Staff has not recognized such events until there is actual factual evidence that the plant is being permanently shut down or put into cold storage.<sup>70</sup> In contrast, Staff witness Holloway testified that "the Commission has never made an adjustment to the assessed value of any property based on a contract that may or may not expire in the future . . . [or] on speculative assumptions that a plant may close at a future date."<sup>71</sup> Yet, this is exactly what Wheelabrator asks the Commission to do in this case. We agree with Staff that if the Commission were to base its assessments of over 300 public service companies on each company's future expectations as opposed to actual events as they happen, then the assessment process would be, in addition to overly burdensome, "greatly flawed, unpredictable, and without merit."<sup>72</sup>

Wheelabrator fails to establish that the Commission's assessment of the Portsmouth Facility is erroneous. Wheelabrator's case is premised on what the Company identifies as a "factual reality" on January 1, 2017, that SPSA had entered into an agreement with RePower L.L.C. ("RePower") for residential waste; therefore, Wheelabrator's contract with SPSA would

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<sup>69</sup> Tr. 396-397.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *See, e.g.*, Tr. 397.

certainly end and not be renewed in late January 2018, which would set off a chain of events leading to full closure and decommissioning of the Portsmouth Facility thereafter.<sup>73</sup>

We are not persuaded. When Staff assessed the Portsmouth Facility for Tax Year 2017, the evidence was too speculative for Staff to have considered what may or may not have occurred to the SPSA residential waste contract on or after January 24, 2018. The success of the RePower contract with SPSA on January 1, 2017, was uncertain.<sup>74</sup> As of January 1, 2017, just a year prior to the anticipated commercial operation date of the RePower facility per the terms of the RePower and SPSA contract,<sup>75</sup> full financing for the RePower facility remained unsecured; an offtake agreement for the new untested fuel pellets the RePower facility would fabricate remained unsecured; and, although some clearing and permitting had been performed, construction of the RePower facility had not yet begun.<sup>76</sup>

Wheelabrator management was aware of this uncertainty. A protest letter penned by Wheelabrator in March of 2016 identified, among other things, the following "enormous risks" attendant to SPSA's contract with RePower: (i) untried process/technology with no operating history; (ii) unproven revenue stream for its products; and (iii) financial/ performance risk.<sup>77</sup> Wheelabrator also noted the lack of a "Plan B" should the RePower contract fail.<sup>78</sup> There is little

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<sup>73</sup> See, e.g., Ex. 70 (Appendix 6 to MRV Report); Tr. 126-135, 137-140, 151-152, 171-172, 174-176, 180, 197-201, 204-208, 212-213.

<sup>74</sup> See, e.g., Tr. 212 "But there was indications that they were working on all those issues and trying to resolve them."

<sup>75</sup> Ex. 84 (SPSA/RePower contract).

<sup>76</sup> See, e.g., Ex. 85 (RePower Reports); Ex. 87 (Minutes of SPSA Board of Directors beginning 1/27/2016); Ex. 66 (Newspaper Article dated 12/14/2016); Tr. 271, 320-321; Ex. 67 (Staff's Eighth Set of Discovery to Wheelabrator).

<sup>77</sup> See, e.g., Ex. 65 (Wheelabrator Protest Letter) at 9.

<sup>78</sup> *Id.* at 10.

indication in the record that Wheelabrator's concerns were unwarranted. Indeed, while its protest was rejected by SPSA, Wheelabrator was vocal to the press that the Company stood by its concerns.<sup>79</sup> There is likewise little indication that Wheelabrator's concerns were dispelled closer to the January 1, 2017 assessment date. As late as December 14, 2016, a widely circulated newspaper article explains that RePower was still trying to negotiate a contract with a customer for fuel pellets and that financing for the RePower facility would "hinge" on RePower locking in a pellet customer.<sup>80</sup> The evidence establishes that Wheelabrator witness Johnson, the Portsmouth Facility's general manager, attended the SPSA board meetings where the contract was repeatedly discussed. The December 14, 2016 SPSA board meeting minutes report Mr. Johnson in attendance and confirm that in mid-December 2016, no financing or offtake agreement had been entered into by RePower.<sup>81</sup> The SPSA board minutes further note that these two items had to be finalized in just over a month, by January 25, 2017, or RePower would be in breach of contract—an outcome Wheelabrator itself had warned of in its protest letter several months before.<sup>82</sup> While it is possible that the financing and offtake agreements could be finalized within the deadline, the "factual reality" is that as of January 1, 2017, they were not. Yet, Wheelabrator's valuation approaches make no room for this uncertainty.<sup>83</sup> As noted by Hearing

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<sup>79</sup> An April 2016 newspaper article quotes Wheelabrator as saying, "We stand by the issues raised in our protest and believe all SPSA communities should be concerned about the viability of the proposed alternative to energy-from-waste that SPSA has endorsed," *See* Ex. 89 (Wheelabrator Ends Protest over South Hampton Roads Trash Disposal dated 4/13/16).

<sup>80</sup> Ex. 66 (Newspaper Article dated 12/14/2016).

<sup>81</sup> Ex. 87 (December 14, 2016 SPSA Board Meeting Minutes).

<sup>82</sup> *Id.*; *see also, e.g.*, Ex. 65 (Wheelabrator Protest Letter) at 9.

<sup>83</sup> *See, e.g.*, Ex. 70 (Appendix 6 to MRV Report); Tr. 126-135, 137-140, 151-152, 171-172, 174-176, 180, 197-201, 204-208, 212-213.

Examiner Thomas, "there is no corroborating documentary evidence, either before or after January 1, 2017, supporting Wheelabrator's theory of the case. . . . It is simply not credible that Wheelabrator management contemplated shutting down and decommissioning the Portsmouth Facility in 2022."<sup>84</sup>

Further, while not necessary to our finding, the events occurring after the assessment date serve only to validate the uncertainty of the RePower contract on January 1, 2017. USPAP Advisory Opinion 34 states that "[w]ith market evidence that data subsequent to the effective date was consistent with the market expectations as of the effective date, the subsequent data should be used."<sup>85</sup> While Wheelabrator ignores subsequent events, Overland and Portsmouth are not incorrect in their application of USPAP Advisory Opinion 34 when they consider events subsequent to the assessment date in their analyses. The evidence in this case shows that data subsequent to January 1, 2017, is consistent with market expectations at that time. Soon after the assessment date, it was known that RePower was in fact not able to obtain a pellet customer nor obtain financing by the January 25, 2017 deadline.<sup>86</sup> By February 2017, a widely circulated newspaper article indicated SPSA was bothered by the missed deadline but that RePower was aiming for a deadline by the end of March.<sup>87</sup> By April, when Wheelabrator still had no pellet customer or financing, SPSA held the first public vote to terminate the RePower contract.<sup>88</sup> By

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<sup>84</sup> Hearing Examiner's Report at 65-66.

<sup>85</sup> *See, e.g.*, Ex. 100 (Rodriguez Rebuttal) at Exhibit 3; Ex. 99 (McMahon Rebuttal) at 6; Ex. 101 (Hazen Rebuttal) at 5; Tr. 40.

<sup>86</sup> *See, e.g.*, Ex. 88 (Minutes of SPSA Board of Director's Meetings Commencing 1/25/17); Ex. 66 (Newspaper Articles dated 12/4/16, 2/22/17, 4/26/2017).

<sup>87</sup> Ex. 66 (Newspaper Article dated 2/22/17).

<sup>88</sup> *See, e.g.*, Tr. 350.

August 2017, SPSA had terminated the RePower contract.<sup>89</sup> Data subsequent to the assessment date is consistent with market expectations of uncertainty for the RePower contract on January 1, 2017. Per USPAP Advisory Opinion 34, subsequent data can be used.

Applicable law establishes that the proper calculation of fair market value must consider the property at its highest and best use. Based on the Company's assumptions about the SPSA contract with RePower, Wheelabrator asserts that the Portsmouth Facility's highest and best use would be as a greenfield, returned to the United States Navy.<sup>90</sup> Every one of Wheelabrator's approaches to calculating fair market value is premised on the immediate termination of Wheelabrator's contract with SPSA in January 2018, due to timely satisfaction of the RePower agreement, and total closure of the Portsmouth Facility a few years later as a result.<sup>91</sup> Yet, even if one were to accept that the SPSA residential waste contract for the Portsmouth Facility would end in 2018, certain and total closure of the Portsmouth Facility within five years is likewise unsubstantiated by the record. For example, according to Staff witness Lubow, the closure of the Portsmouth Facility would be considered material under generally accepted accounting principles (GAAP), requiring disclosure.<sup>92</sup> Evidence of plant closure would have been disclosed in financial statements, goodwill and cashflow statements, communications with vendors and related entities.<sup>93</sup> Yet, Wheelabrator was unable to produce any such evidence before, on or even after January 1, 2017. Financial statements for WTI (Wheelabrator's parent company) reflect

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<sup>89</sup> See, e.g., Ex. 94 (Lubow) at 19.

<sup>90</sup> See, e.g., Ex. 71 (Rodriguez Direct) at 10; Tr. 154-156, 203-204; Wheelabrator Objections to Report at 3.

<sup>91</sup> See, e.g., Ex. 70 (Appendix 6 to MRV Report); Tr. 126-135, 137-140, 151-152, 171-172, 174-176, 180, 197-201, 204-208, 212-213.

<sup>92</sup> Ex. 94 (Lubow) at 12; Tr. 432; Staff Post-Hearing Brief at 5-6.

<sup>93</sup> See, e.g., Staff Post-Hearing Brief at 6; Tr. 434-435.

entries of asset retirement obligations arising from *other* affiliates, but nothing regarding the Portsmouth Facility.<sup>94</sup> In fact, at the hearing, Wheelabrator witness Johnson testified that he was unable to recall any discussion of a plant closure at all prior to or on the January 1, 2017 assessment date.<sup>95</sup> Further, on December 14, 2016, both a widely disseminated newspaper article and the SPSA board minutes indicate that SPSA leadership personnel were to begin negotiations with Wheelabrator and Bay Disposal in response to their proposals for Solid Waste Hauling and Disposal Services for Non Municipal Waste Received at SPSA.<sup>96</sup> The record in this case establishes that the contract term could be extended, at SPSA's sole request, for up to 15 years.<sup>97</sup> Such bidding and contract terms are directly at odds with Wheelabrator's assumption that the Portsmouth Facility would be shuttered within five years. The record simply does not support Wheelabrator's premise that the Portsmouth Facility's highest and best use is a greenfield returned to the United States Navy. Wheelabrator's evidence of fair market value for the Portsmouth Facility is thus deeply flawed and in direct conflict with the applicable law.<sup>98</sup>

Even if we were to accept Wheelabrator's "factual reality" as true, however, witness Lubow identified flaws in the manner in which Wheelabrator's experts applied their methodologies, separate and apart from their flawed premises that the RePower contract would

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<sup>94</sup> See, e.g., Tr. 434.

<sup>95</sup> See, e.g., Tr. 108-114. See also, e.g., Ex. 67 (Staff's Eighth Set of Discovery to Wheelabrator).

<sup>96</sup> Ex. 87 (December 14, 2016 SPSA Board Meeting Minutes). Portsmouth witness Trimyer corroborated Wheelabrator's response to this RFP. See Tr. 315-316.

<sup>97</sup> See, e.g., Ex. 81 (Waste Hauling and Disposal Services Agreement); Tr. 316.

<sup>98</sup> Considering the Portsmouth Facility's highest and best use as a functioning waste-to-energy facility with a 40 year economic life (per Wheelabrator's assumptions), for example, yields a cost approach result (\$90 million) that is closer to the range calculated by Staff and independent consultant Lubow. See, e.g., Ex. 96 (Summary Cost Approach); Tr. 445-446.



replace the Wheelabrator contract with SPSA in January 2018 and that the Portsmouth Facility would be shuttered as a result. Witness Lubow testified, for example, that Wheelabrator's experts ignored the implications and effects of net operating loss carryforwards when considering tax levels attributable to the Portsmouth Facility's operations and used an incorrect size premium in its calculation of cost of capital for the facility that more than doubled its cost of equity.<sup>99</sup> Furthermore, the MRV Report incorrectly includes an adjustment for an alleged functional obsolescence. Wheelabrator's appraisers assert that there is a functional obsolescence attributable to the design and operation of the facility, to-wit, it no longer burns coal, and has more burners and generators than it needs.<sup>100</sup> However, Company witness Johnson confirmed that the plant uses all four boilers and all three turbine generators during normal operation of the facility.<sup>101</sup> Johnson further confirmed that all equipment related to burning coal had been removed from the facility and is no longer in use.<sup>102</sup> No coal has been used in the Portsmouth Facility since SPSA took control of it from the U.S. Navy in 1999.<sup>103</sup> Accordingly, any reduction related to the Portsmouth Facility no longer burning coal should have been accounted for as part of the \$150 million purchase price paid when the facility was bought from SPSA in 2010.<sup>104</sup>

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<sup>99</sup> See, e.g., Ex. 94 (Lubow) at 10, 14-17, 20; Tr. 462-463.

<sup>100</sup> See, e.g., Ex. 58 (MRV Report) at 25, 41; Ex. 71 (Rodriguez Direct) at 5-6, 18, 23-24; Ex. 76 (Baldoni Direct) at 4-5, 12, 15; Ex. 94 (Lubow) at 12; Tr. 156-159; Wheelabrator Post-Hearing Brief at 8, 24; Wheelabrator Objections to Report at 16.

<sup>101</sup> Tr. 85.

<sup>102</sup> Tr. 84-86.

<sup>103</sup> Tr. 84-86; Ex. 62 (Johnson Direct) at 3.

<sup>104</sup> See, e.g., Tr. 84-86.

The Overland Report and Mr. Lubow's supporting testimony confirm Staff's assessment of the Portsmouth Facility's fair market value is reasonable. Overland conducted a rigorous analysis of Staff's cost approach and found the results to be compelling.<sup>105</sup> Overland also conducted its own separate and independent valuation using six methods under the cost, income, and sales approaches as a check against Staff's cost approach. Overland's approach is consistent with the analyses Mr. Lubow has employed for over 35 years, including before this Commission in Case No. PST-2003-00065.<sup>106</sup> Overland's multitude of methods and approaches reached values supporting Staff's assessment of the fair market value of the Portsmouth Facility.<sup>107</sup> After equally weighting all of its results, Overland's market valuation for the Portsmouth Facility of \$134 million is only slightly above the Staff's fair market value assessment of the Portsmouth Facility at \$132,158,434, before accounting for pollution control equipment not subject to taxation.<sup>108</sup>

For the foregoing reasons, we find Wheelabrator failed to meet its burden to show that the Commission's January 1, 2017 assessment of its Portsmouth Facility was erroneous.

Wheelabrator's Application is denied.

Accordingly, IT IS ORDERED THAT:

- (1) Wheelabrator Portsmouth, Inc.'s Application is denied.
- (2) This case is dismissed.

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<sup>105</sup> See, e.g., Ex. 94 (Lubow) at 4, Attachment 1, p. 1-13 to 1-16, 7-1 to 7-9; Staff Post-Hearing Brief at 20.

<sup>106</sup> See, e.g., Tr. 425-429; Staff Post-Hearing Brief at 21.

<sup>107</sup> See, e.g., Ex. 94 (Lubow) at Attachment 1, p. 1-15.

<sup>108</sup> See, e.g., Staff Post-Hearing Brief at 15, 20; Ex. 94 (Lubow) at 5, Attachment 1, p. 1-12 to 1-16.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

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