

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

2006 CA 1013

CROSSTEX LIG, LLC

VERSUS

RICH BAILEY, IN HIS CAPACITY AS ASSESSOR FOR OUACHITA PARISH  
AND THE LOUISIANA TAX COMMISSION

CONSOLIDATED WITH

2006 CA 1014

CROSSTEX LIG, LLC

VERSUS

RALPH GILL, IN HIS CAPACITY AS ASSESSOR FOR RAPIDES PARISH AND  
THE LOUISIANA TAX COMMISSION

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JUDGMENT RENDERED: SEP 15 2006

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ON APPEAL FROM THE  
NINETEENTH JUDICIAL DISTRICT COURT  
DOCKET NO. 536,497, DIVISION D, C/W DOCKET NO. 536,840, DIVISION D  
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE JANICE CLARK, JUDGE

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ENTERPRISE PRODUCTS PARTNERS, L.P.

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BEFORE: MCDONALD, HUGHES AND WELCH, JJ.

**McDONALD, J.**

In the instant case, a taxpayer appeals a decision of the Louisiana Tax Commission (the "Commission") relating to the ad valorem taxation of segments of an intrastate natural gas pipeline located in Rapides and Ouachita Parishes. For the following reasons, we affirm.

**FACTS**

On or about February 13, 2004, Crosstex Energy, L.P. ("Crosstex Energy") and AEP Energy Services Investments, Inc. ("AEP") entered into a purchase agreement whereby Crosstex Energy agreed to purchase all of the outstanding capital stock of LIG Pipeline Company ("LIG"), an intrastate pipeline company engaged primarily in the business of transporting and storing natural gas for sale and resale to customers in Louisiana. The sale of LIG was completed in or around April 2004. At issue in the instant appeal is whether ad valorem property taxes were properly assessed for the 2004 tax year as to the pipeline acquired pursuant to that sale.

All property situated within the state, except such as is expressly exempted by law, shall be subject to taxation. La. R.S. 47:1951. All taxable property, except public service properties, shall be assessed by the several assessors. La. R.S. 47:1957(A). Property subject to taxation shall be listed and assessed at the proper percentage of its fair market value or use value as required by the constitution and laws. La. Const. art. VII, §18; La. R.S. 47:1957(B).<sup>1</sup> Further, the Commission shall issue and from time to

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<sup>1</sup> La. Const. art. VII, §18(B) provides:

**Classification.** The classifications of property subject to ad valorem taxation and the percentage of fair market value applicable to each classification for the purpose of determining assessed valuation are as follows:

Classifications	Percentages
1. Land	10%
2. Improvements for residential purposes	10%
3. Electric cooperative properties, excluding land	15%
4. Public service properties, excluding land	25%
5. Other property	15%

The legislature may enact laws defining electric cooperative properties and public service properties.

Intrastate pipelines are classified as "other property" and are taxed at a rate of 15% of fair market value. See **ANR Pipeline Co. v. La Tax Comm'n**, 2005-1142 (La. App. 1 Cir. 9/7/05), 923 So.2d 81, writ denied, 2005-2372 (La. 3/17/06), 925 So.2d 547.

time may amend or revise rules and regulations containing minimum standards of assessment and appraisal performance. La. R.S. 47:1837(D).

Assessment of pipelines is based on fair market value. The criteria for determining fair market value shall apply uniformly throughout the state. La. R.S. 47:2323. The guidelines for ascertaining the fair market value of pipelines, adopted by the Commission and contained within the Louisiana Administrative Code, provide that pipelines are to be valued for assessment purposes at cost less physical deterioration. La. Admin. Code 61:1301(A)(2). Specifically, this "cost-new" is to be reduced for the appropriate allowance for physical deterioration based on the age of the pipeline, by multiplying replacement cost by the appropriate percent good factor. *Id.*

Also, the guidelines provide for an allowance based on functional and economic obsolescence. The guidelines provide in pertinent part as follows:

**§1301. Guidelines for Ascertaining the Fair Market Value of Pipelines**

A. General

\* \* \* \*

2. . . . Where significant functional and economic obsolescence has been proven to the assessor, appropriate allowance should be made on an individual basis.

\* \* \* \*

**§1305. Reporting Procedures**

\* \* \* \*

F. Assessment will be based on fair market value (refer to column on LAT Form 14) unless taxpayer provides evidence that conditions exist that warrant change. Economic and/or functional obsolescence is a loss in value of personal property above and beyond physical deterioration. Upon a showing of evidence of such loss, substantiated by the taxpayer in writing, economic or functional obsolescence may be given.

G. Economic obsolescence may be recognized with a service factor calculated using the following formula and table:<sup>2]</sup>

$$\text{Service Factor} = (\text{Actual Throughput} / \text{Rated Capacity})^{0.6}$$

This service factor represents remaining utility for the pipeline and may be applied in addition to normal depreciation.

Under the above guidelines, rated capacity is the maximum amount of gas, measured in billion cubic feet (BCF), that could pass through the pipeline, whereas actual throughput refers to the amount of gas that is passing through the pipeline. If a pipeline is operating at full capacity, its service factor approaches 100% and no obsolescence is identified. However, if the capacity of the pipeline substantially exceeds the amount of product actually flowing through the line, a lower service factor will result, and obsolescence will have been identified and quantified.

In the instant case, at all times prior to the sale of LIG to Crosstex Energy, AEP remained responsible for the filing of tax returns for LIG, including those related to ad valorem taxes. Accordingly, on or about March 29, 2004, Darrell Montgomery, AEP Senior Property Tax Analyst, filed ad valorem reporting forms in the various parishes in which its pipelines were situated, including Rapides and Ouachita Parishes. AEP requested a 58% reduction in fair market value for economic obsolescence. In support

<sup>2</sup> Table 1305 provides the following conversion chart and guidelines for determining the Service Factor (Remaining Utility).

Throughput/Capacity Percentage	Obsolescence Percentage	Service Factor Percentage
95	3	97
90	6	94
85	9	91
80	13	87
75	16	84
70	19	81
65	23	77
60	26	74
55	30	70
50	34	66
45	38	62
40	42	58
35	47	53
30	51	49
25	56	44
20	62	38
15 or less	65*	35*

\*Reflects residual or floor rate.

1. First, divide Actual Throughput by Rated Capacity to determine the percentage.
2. Then, find that percentage in Column 1 (round to the nearest five percent) and multiply the depreciated cost-new assessed value of the pipeline by the percentage indicated in Column 3 to allow the amount of economic obsolescence indicated in Column 2.

of the requests for reduction, AEP provided calculations disclosing a 62% service factor, or 38% economic obsolescence, based upon a rated capacity of 1.2 BCF of gas per day, and also requesting an additional economic obsolescence of 20% based on weak financial performance. No reference to the sale of LIG Pipeline by AEP to Crosstex Energy was contained in any of the information filed by AEP.

Upon consideration of the reporting forms filed by AEP, the Ouachita Parish assessor granted a reduction in fair market value for economic obsolescence based upon a 65% service factor and rejected AEP's request for additional economic obsolescence based on performance. The Rapides Parish Assessor wholly rejected AEP's request for a reduction in fair market value based on economic obsolescence.

Thereafter, subsequent to its purchase of LIG Pipeline in April 2004, Crosstex Energy undertook its own analysis into the rated capacity of the pipeline, finding a rated capacity of 1.9 BCF, which would reduce the service factor from 62% to 49%.<sup>3</sup> In late August or early September 2004, Crosstex Energy advised the assessors of the reevaluation of the rated capacity and requested a recalculation of the service factor. No documentation was provided in conjunction with the requests for recalculation, and the Boards of Review for Rapides and Ouachita Parishes advised that they did not believe recalculation was warranted.<sup>4</sup> Accordingly, in separate actions, Crosstex LIG, LLC ("Crosstex LIG"), an affiliate of Crosstex Energy, sought review of the Ouachita and Rapides Parish assessors' determinations of fair market value with the Commission pursuant to La. Const. art. VII, §18(E) and La. R.S. 47:1989.<sup>5</sup>

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<sup>3</sup> K.E. Andrews & Company was retained to perform valuation work in connection with the LIG pipeline. Mark Andrews, an appraiser employed by K.E. Andrews & Company, has testified that the decrease in service factor may be at least partially attributable to the addition of 36 inches of pipeline five years ago. However, no proof has been provided in support of that assertion.

<sup>4</sup> Crosstex LIG submits that every other assessor who was approached regarding the grant of economic obsolescence for the LIG pipeline granted it and calculated it based on the actual throughput capacity reported by Crosstex Energy and not the lower throughput capacity previously reported by AEP.

<sup>5</sup> La. Const. art. VII, §18(E) provides for review of determinations of fair market value by parish assessors:

**Review.** The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

Also, La. R.S. 47:1989(B) provides:

The Louisiana Tax Commission shall consider the appeal of any taxpayer, bona fide representative of an affected tax-recipient body, or assessor dissatisfied with the determination of a local board of review. All documents, except confidential forms as provided in R.S. 47:2327, filed in connection with any appeal shall be available for public inspection during the regular business hours of the Louisiana Tax Commission.

## **ACTION OF THE COMMISSION AND THE DISTRICT COURT**

A protest hearing was held before the Commission on May 5, 2005. At the hearing, Ouachita Parish Deputy Assessor Bobby G. Dumas testified that the assessor's office had for the preceding several years always given a service factor of 65% and the taxpayer simply did not provide proof sufficient to justify a change for the 2004 tax year. Additionally, Dumas testified that he did not believe the additional 20% economic obsolescence, as requested by AEP, was warranted based on the prices of natural gas for the preceding year.

Rapides Parish Deputy Assessor Richard Ducote, Jr. testified that he has never granted an adjustment based on economic obsolescence. In order to warrant such an adjustment, Ducote testified that the taxpayer would have to establish some outside factor that affects the value or usefulness of the pipeline. As to the LIG pipeline, Ducote testified that no evidence was provided by the taxpayer in support of its claim for obsolescence.

Finally, Stan Byrd, the northern regional superintendent for Crosstex Energy, testified that he was unaware of any change in the pipeline system between January 1, 2004, and the sale of the LIG capital stock in April of that same year. Also, Byrd testified that he was uncertain as to when Crosstex Energy undertook its independent analysis of throughput capacity and when disclosure was made to the parish assessors of the rated capacity of 1.9 BCF.

At the close of the protest hearing, the Commission took the appeal under advisement. Thereafter, by virtue of a written ruling dated August 17, 2005, the Commission found that the fair market valuation rendered by the Ouachita Parish Assessor's Office was incorrect to the extent that it failed to adhere to the uniform guidelines set forth in La. Admin. Code 61:1305(G) and that it included a reduction in value for the pipeline for economic obsolescence based upon the previous year's service factor of 65%. The Commission reasoned that, while the determination of whether economic obsolescence should be granted is vested in the sound discretion of the assessor, the methodology by which the level of economic obsolescence is calculated is not. Accordingly, the Commission modified the determination of assessed value to

reflect the 62% service factor reported by AEP in the tax reporting forms and affirmed the valuation as modified.<sup>6</sup>

By virtue of a separate, written ruling dated September 28, 2005, the Commission found that Crosstex Energy did not establish any facts nor tender any authority mandating an allowance for economic obsolescence by the Rapides Parish assessor, and the assessor did not abuse his discretion in failing to grant an allowance for economic obsolescence. Thus, the Commission affirmed the Rapides Parish Assessor's determinations of assessed value.

Crosstex LIG appealed the rulings of the Commission to the 19<sup>th</sup> Judicial District Court pursuant to La. R.S. 47:1998(A)(1)(a)<sup>7</sup>, which matters were consolidated for a hearing. Following a hearing on March 6, 2006, and based upon a review of the administrative record, the district court issued a written judgment on March 16, 2006, finding that the rulings of the Commission were supported by a preponderance of the evidence and correct as a matter of law.

On March 24, 2006, Crosstex LIG filed a motion seeking a suspensive appeal without necessity for security of the ruling of the trial court. On appeal to this court, Crosstex LIG argues that the trial court erred in finding that the reduction of value of property for ad valorem tax purposes based upon obsolescence is in the sole discretion of the individual assessor and that Rapides should grant the requested economic obsolescence. Further, Crosstex LIG contends that the parish assessors for both Rapides and Ouachita Parishes should have relied on the throughput capacity reported

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<sup>6</sup> Notably, the Commission found that the assessor did not err in failing to grant economic obsolescence based upon a 49% service factor, as reported by Crosstex Energy, because the taxpayer provided no documentation supporting the claim that the rated capacity of the pipeline was 1.9 BCF.

<sup>7</sup> La. R.S. 47:1998(A)(1)(a) provides:

Any taxpayer or bona fide representative of an affected tax-recipient body in the state dissatisfied with the final determination of the Louisiana Tax Commission under the provisions of R.S. 47:1989 shall have the right to institute suit within thirty days of the entry of any final decision of the Louisiana Tax Commission in the district court for the parish where the Louisiana Tax Commission is domiciled or the district court of the parish where the property is located contesting the correctness of assessment. Any taxpayer who owns property assessed in more than one parish may institute this suit in either the district court for the parish where the tax commission is domiciled or the district court of any one of the parishes in which the property is located and assessed, provided at least twenty-five percent of the parishes where the property is located are named in the suit. However, if at least twenty-five percent of the parishes are not named in the suit, then suit must be filed in the parish where the property is located.



by Crosstex Energy, rather than AEP, in computing valuation.<sup>8</sup> No parties have answered the appeal pursuant to La. Code Civ. P. art. 2133, nor have any separate appeals been filed seeking review of the judgment of the 19<sup>th</sup> Judicial District Court.

### **ASSIGNMENTS OF ERROR**

In connection with its appeal in this matter, Crosstex LIG presents the following issues, or assignments of error, for consideration by this court:

(1) The trial court erred in holding that in the valuation of property for ad valorem property tax purposes the granting of obsolescence is in the sole discretion of the individual tax assessor, in direct violation of Louisiana constitutional and statutory law.

(2) The trial court erred in refusing to recognize that obsolescence must be considered by the Rapides Assessor in connection with the valuation of the Crosstex LIG pipelines based on the correct throughput capacity reported by Crosstex LIG.

(3) The trial court erred in not requiring that the Ouachita Parish Assessor compute the obsolescence based on the correct throughput capacity, as reported by Crosstex LIG, instead of the incorrect throughput capacity reported by the previous owner in prior years.

(4) The trial court erred in denying Crosstex LIG the relief sought in its Petitions/Administrative Appeals from the decisions of the Commission.

### **LEGAL PRECEPTS**

Appeals from decisions of the Commission are governed by the Administrative Procedure Act ("APA").<sup>9</sup> The extent of that review is governed by La. R.S. 49:964(F) and (G). Louisiana Revised Statute 49:964(F) confines judicial review to the record

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<sup>8</sup> On appeal to the Commission, Crosstex LIG also complained that the Ouachita and Rapides Parish assessors' determinations of fair market value were higher than the allocated sales price it had paid to purchase the LIG pipeline from AEP. The Commission rejected this argument, noting that the only documentation provided to the assessor prior to closing of the tax rolls was an amendment to the purchase agreement that contained no reference to the purchase price or any of the terms and conditions upon which Crosstex LIG purchased LIG. To the extent that Crosstex LIG has not raised this as an assignment of error herein, this Court will not consider whether the sales price should have been considered in determining fair market value pursuant to La. Admin. Code 61:1305(H).

<sup>9</sup> This court notes that the holding of the Louisiana Supreme Court in **Dow Chem. Co. v. Pitre**, 421 So.2d 847 (La. 1982), that the Commission is not subject to the Administrative Procedure Act was legislatively overruled by the 1982 amendment to La. R.S. 49:967(A). The amendment provides the Commission is governed by the APA unless otherwise specifically provided by law. Although La. R.S. 47:1998 authorizes judicial review of decisions of the Commission, it does not set forth any specific procedures or standards for such judicial review. In the absence of a specific provision regarding the standard of review, La. R.S. 47:1998 is insufficient to exclude application of the APA pursuant to La. R.S. 49:967(A). We further note that the parties herein have not objected to the application of the APA. **MidLouisiana Rail Corp. v. La. Tax Comm'n**, 588 So.2d 1163, 1166 n.2 (La. App. 1 Cir. 1991), writ denied, 594 So.2d 895 (La. 1992).

established before the agency. La. R.S. 49:964(G) establishes guidelines as to the standard for review, providing in pertinent part:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

The APA recognizes that judicial review is a multifaceted function involving several types of review. The manifest error test is used in reviewing factual determinations of the trial court, with due deference to be given to the agency's determinations of credibility. **St. Martinville, L.L.C. v. La. Tax Comm'n**, 2005-0457 (La. App. 1 Cir. 6/10/05), p. 4, 917 So.2d 38, 41-42. The arbitrariness test is used in reviewing conclusions in exercises of agency discretion. La. R.S. 49:964(G)(5). Questions of law, such as the proper interpretation of a statute, are reviewed under the de novo standard of review. **La. Mun. Ass'n v. State**, 2004-0227, p. 35 (La. 1/19/05), 893 So.2d 809, 836.

### **ANALYSIS**

In the instant appeal, Crosstex LIG submits that La. R.S. 47:2323(C)(2) requires the assessor to consider depreciation in utilizing the cost approach for calculating fair

market value.<sup>10</sup> Crosstex LIG further points out that the general provisions of La. Admin. Code 61:1301(A)(2) provide that where significant functional and economic obsolescence has been proven to the assessor, appropriate allowance "should" be made on an individual basis. Insofar as the word "should" is a derivative of "shall," Crosstex LIG avers that the guidelines contain a mandatory directive that economic obsolescence be granted when proven. Crosstex LIG contends that the permissive term "may," as used in La. Admin. Code 61:1305(G), merely refers to the authority of the assessor to calculate the compulsory economic obsolescence using the service factor formula as opposed to some other method of calculating the obsolescence. In this sense, Crosstex LIG argues that economic obsolescence is a necessary step in the proper determination of fair market value.

To otherwise interpret the law so as to allow an assessor the discretion to determine whether to grant obsolescence, Crosstex LIG argues, would violate the constitutional and statutory law requirements that fair market value be determined based on legally established criteria and applied uniformly. Crosstex LIG submits that this is particularly true in a case such as the one at hand, where every other parish, with the exception of Rapides, granted a reduction in taxes based on economic obsolescence.

Also, Crosstex LIG submits that a calculation of fair market value based on outdated throughput information would be contrary to the intent of the law to tax property based upon its current fair market value and to reduce the value of the property beyond physical depreciation for economic hardships due to use of the pipeline at less than full capacity. Accordingly, Crosstex LIG submits that the Commission erred in refusing to recognize and re-compute obsolescence based on updated throughput figures provided by Crosstex Energy subsequent to its acquisition of the property in April 2004.

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<sup>10</sup> La. R.S. 47:2323(C)(2) provides:

In utilizing the cost approach, the assessor shall use a method in which the value of a property is derived by estimating the replacement or reproduction cost of the improvements; deducting therefrom the estimated depreciation; and then adding the market value of the land, if any.

As authority for the position that the Commission erred in refusing to recognize a 49% service factor, Crosstex Energy cites the case of **Warren Energy Resources, Inc. v. La. Tax Comm'n**, 2002-115 (La. App. 3 Cir. 8/28/02), 825 So.2d 572, writ denied, 2002-2450 (La. 12/13/02), 831 So.2d 985. At issue in that case were the 1997 and 1998 ad valorem tax assessments on several gas-gathering pipelines owned by Dynergy and situated in Cameron Parish. On appeal, Dynergy argued that the fair market values determined by the Cameron Parish tax assessor, as affirmed by the Commission and the 38th Judicial District Court, were severely overestimated. In considering the evidence of record, the Third Circuit Court of Appeal noted that the assessor admittedly disregarded the June 1996 sales price of the pipelines and utilized the cost approach based on information provided by the previous owner to achieve uniformity with other gas lines throughout the parish for the 1997 tax year. Under those circumstances, the Third Circuit Court of Appeal found the assessor's disregard of the sale to be arbitrary and capricious and reversed the Commission's 1997 fair market value, thereby adopting the purchase price as the 1997 fair market value of the lines. As to 1998 taxes, the appellate court noted that it was unclear how the assessor arrived at fair market value. Additionally, the court found that there was reference in the assessor's notes to an obsolescence percentage of 42% that was not included in the calculation of the assessed value. For these reasons, the court reversed the trial court's affirmation of the Commission's 1998 fair market value and adopted the value purported by Dynergy, as substantiated by evidence of decreased throughput capacity and recently abandoned portions of the pipeline.

Based on the foregoing law and argument, Crosstex LIG submits that it is entitled to recognition of economic obsolescence for that portion of the LIG pipeline situated in Rapides Parish. Crosstex LIG submits that a rated capacity of 1.9 BCF should be used to calculate the service factor upon which economic obsolescence is based for both Rapides and Ouachita Parishes.

In opposition to the appeal, the Commission argues that nothing in the constitutionally derived uniformity mandate requires an assessor to grant

obsolescence.<sup>11</sup> Rather, the Commission points out that La. Admin. Code 61:1305(F) and (G) use the permissive term “may” in reference to the assessors’ authority to grant obsolescence, indicating that the decision of whether to grant or deny obsolescence is within the discretion of the assessors. Additionally, the Commission argues that the fact that other assessors have invoked their discretion to grant economic obsolescence as part of a settlement with Crosstex LIG does not mean that the Rapides assessor must do so in order to comply with the constitutional requirements of uniformity.

Herein, the Commission submits that Crosstex LIG offered no expert testimony relative to economic obsolescence in Rapides Parish, nor did it offer any evidence as to what constitutes accepted appraisal methodology. In this sense, the Commission alleges that Crosstex LIG did not make a sufficient showing of obsolescence and that the assessor for Rapides Parish did not abuse his discretion in refusing to grant obsolescence.

Ouachita and Rapides Parish assessors Rich Bailey and Ralph Gill have also opposed the instant appeal by filing briefs with this court. As to the assessment for that portion of the pipeline located in Rapides Parish, Ralph Gill submits that the Constitution and laws require that there be uniform criteria for assessment and uniform application of those criteria, not uniformity of result. In this sense, he suggests that the Commission’s rules and regulations properly vest the parish assessors with discretion as to whether to grant obsolescence. Here, where the only documentation timely provided to the Rapides Parish Assessor was the LAT 12 reporting form submitted by AEP and which included no evidence to support the request for obsolescence, Gill contends that he was proper in refusing to make an adjustment for obsolescence.

Similarly, Rich Bailey, the assessor for Ouachita Parish, argues that the pertinent question to be resolved by this court on appeal is whether Crosstex Energy provided him with sufficient proof to accept a throughput capacity of 1.9 BCF. Bailey submits that it is within an assessor’s discretion as to whether he should accept a taxpayer’s estimate on pipeline throughput. Thus, where Crosstex Energy’s sole representation

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<sup>11</sup> The Commission has limited its arguments in opposition to the appeal to the issues raised in appellant’s first assignment of error.

that the rated capacity was 1.9 BCF consisted of an unsubstantiated protest letter dated September 30, 2004, Bailey contends that he properly refused to calculate obsolescence based on a 1.9 BCF service factor.

Bailey submits that the determination of fair market value shall be based on the condition of the property as of January 1 of every year pursuant to La. R.S. 47:1952(A).<sup>12</sup> To the extent that the taxpayer herein offered no sufficient, credible proof to suggest a change as of January 1, 2004, as to those portions of the LIG pipeline located in Ouachita Parish, the assessor suggests that his original assessment should be affirmed.<sup>13</sup>

Laws on the same subject matter must be interpreted in reference to each other. La. Civ. Code art. 13. Herein, the relevant law is provided in the rules and regulations adopted by the Commission and contained in the Louisiana Administrative Code. Although La. Admin. Code 61:1301(A)(2) provides that an allowance for obsolescence "should" be granted when "significant" obsolescence is proven, it reserves the assessors' authority to deny such obsolescence allowance on an "individual basis." Further, both subparagraphs (F) and (G) of La. Admin. Code 61:1305 use the permissive term "may" in reference to the assessors' authority to grant economic obsolescence. In this sense, when read as a whole, it is apparent that it was the intent of the Commission, in adopting its rules and regulations, to vest the individual parish assessors with discretion as to whether to grant economic obsolescence.

Having concluded that the grant of obsolescence is discretionary, we must first determine whether Assessor Ralph Gill abused his discretion by refusing to grant

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<sup>12</sup> La. R.S. 47:1952(A) provides:

All property subject to taxation, including merchandise or stock in trade, shall be placed upon the assessment lists in the respective parishes or districts where situated. Assessments shall be made on the basis of the condition of things existing on the first day of January of each year; however, as to the ownership of immovable property subject to taxation, the assessor may note on the tax roll any transfer of such property which takes place after the first day of January but before the assessor files the tax roll with the tax collector as required in R.S. 47:1993, if practicable. If the assessor makes such note on the tax rolls, the tax notice shall then be sent to such owner in lieu of the owner of the property as of January first.

<sup>13</sup> To the extent that the Commission modified the assessment for those portions of the pipeline located in Ouachita Parish to reflect a service factor of 62% (as shown on the returns filed by AEP) rather than 65% (as determined by the assessor) and Rich Bailey has not answered the instant appeal or filed a separate appeal formally requesting modification of the Commission's findings, this court will disregard the argument that the original assessment for that parish should be reinstated.

obsolescence for those portions of the pipeline situated in Rapides Parish. As to this issue, we note that the constitutional and statutory law requirements of uniformity in assessment do not mandate that every pipeline within a parish be assessed identically or that every parish render the same assessment as to a single pipeline.<sup>14</sup> To the contrary, as implied by the Third Circuit Court of Appeal in **Warren Energy**, in considering the 1997 assessment of taxes, the disregard of relevant information as to valuation in order to achieve uniformity is improper. Under this same rationale, the grant of economic obsolescence in the absence of any evidence thereof in order to achieve uniformity with other parishes would likewise be improper.

Based upon a review of the record, the taxpayer in this case did not provide the Rapides Parish Assessor with any substantive evidence prior to the close of the tax rolls of diminished capacity in support of its demand for obsolescence.<sup>15</sup> Thus, the assessor did not abuse his discretion in denying obsolescence and the Commission did not err in affirming the assessment as to those portions of the pipeline in Rapides Parish.

Although the determination of whether economic obsolescence should be recognized is vested in the sound discretion of the assessor, the method by which obsolescence is calculated should be applied uniformly. To the extent that the Ouachita Parish Assessor did in fact determine that economic obsolescence should be granted as to the portion of the pipeline situated in his parish, we must next determine whether the Commission properly recalculated economic obsolescence in that parish based upon a service factor of 62%.<sup>16</sup>

Specifically, the Commission based its computation on throughput information provided in the original ad valorem reporting forms filed by AEP and rejected both

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<sup>14</sup> Such an interpretation of the law would lead to absurd results, as clearly there are variances among the various pipelines within a single parish as well as among those portions of a single pipeline running through multiple parishes.

<sup>15</sup> The ad valorem report submitted by AEP Senior Property Tax Analyst Darrell Montgomery to the Rapides Parish Assessor on March 29, 2004, contained a 2004 Louisiana Intrastate Gas Pipeline Service Factor Remaining Utility Conversion Chart Table prepared by the taxpayer. Therein, AEP disclosed a 62% service factor, or 38% economic obsolescence, and requested an additional economic obsolescence of 20% based on weak financial performance. Detailed supporting figures, however, were not provided for the calculations.

<sup>16</sup> As previously noted, since the assessor for Ouachita Parish has neither answered the instant appeal nor filed a separate appeal, the issue of whether economic obsolescence was properly granted as to the portion of the pipeline in that parish will not be considered by this court. Rather, we will focus on whether obsolescence was properly calculated.

Crosstex Energy's request for economic obsolescence based upon a 49% service factor and the parish assessor's original determination of a 65% service factor. Since the Ouachita Parish Assessor based its assessment on filings from previous years, he acted arbitrarily in rejecting more recent throughput information reported in the ad valorem tax forms filed by AEP upon opening of the tax rolls. Also, based upon a review of the record, Crosstex Energy did not provide the assessor with any written request for recalculation based on a rated capacity of 1.9 BCF or any documentation supporting its claim that the rated capacity of the pipeline was greater than the 1.2 BCF per day disclosed in the returns filed by AEP. Accordingly, we find that the Commission did not err in modifying the assessment to reflect a 62% service factor.

In reaching the conclusion that the Commission applied the proper service factor percentage in calculating fair market value, we note that the facts and circumstances in the instant case are distinguishable from those considered by the Third Circuit Court of Appeal as to 1998 ad valorem taxes in the **Warren Energy** case. While the taxpayer in **Warren Energy** provided the assessor with substantial evidence of diminished throughput capacity and productivity for the gas lines at issue, the taxpayer in the instant case has not supported its demand for obsolescence based upon a 49% service factor with any evidence. Thus, the rationale of **Warren Energy** does not apply herein to warrant recalculation of obsolescence based upon a 49% service factor.

### **CONCLUSION**

For the above and foregoing reasons, the judgment of the trial court affirming the findings of the Louisiana Tax Commission relating to the ad valorem taxation of segments of the intrastate natural gas pipeline located in Rapides and Ouachita Parishes is affirmed. Costs of this appeal are assessed against the appellant, Crosstex LIG, LLC.

**AFFIRMED.**