



# City of Auburn, Maine

Regulatory Advisory Board

60 Court Street | Auburn, Maine 04210

October 17, 2022

Brookfield White Pine Hydro, LLC  
c/o Paul Brenton  
2000 Donald Lynch Blvd. Suite 300  
Marlborough, ME 01752

Re : Tax Abatement Applications for properties located at the following Map-Lot locations: 314-005, 315-001 and 326-007 (“*Deer Rips Hydro Facility*”) and 347-011, 347-012, 347-017, 369-004 and 369-005 (“*Gulf Island Hydro Facility*”) (April 1, 2021 assessment date)

Mr. Brenton:

Appellant Brookfield White Pine Hydro, LLC (hereinafter, “Appellant”) seeks an abatement from the assessments of the Deer Rips Hydro Facility and Gulf Island Hydro Facility as of April 1, 2021. The Assessor valued the Deer Rips Hydro Facility at \$12,124,600, and Appellant seeks an abatement of \$3,015,889, to reduce the assessment to \$9,108,711. The Assessor valued the Gulf Island Hydro Facility at \$14,650,900, and the Appellant seeks an abatement of \$3,939,224 to reduce the assessment to \$10,711,676 (collectively, the “Appeals”).

The Auburn Regulatory Advisory Board, (“the Board”) met on October 12, 2022, for a hearing on the limited issue of whether the Appellant is barred from pursuing the Appeals pursuant to 36 M.R.S. §706-A due to its alleged failure to provide requested information to the City’s Assessor. The parties agreed to bifurcate the hearing on the Appeals and address this issue first. Prior to the commencement of the hearing, the parties agreed that the Appeals would be consolidated for hearing. The testifying parties were then placed under oath.

The record of this hearing included the letters received by the Board prior to the hearing and the recording of the hearing. The exhibits are identified as follows:

- BWPH 1: August 9, 2022 Letter from Emmanuela D’Ambrogio to the Board of Assessment Review [*stet*] attaching Exhibits A—K;
- City 1: October 5, 2022 Memorandum from Sally J. Daggett to the Auburn Regulatory Advisory Board; and
- BWPH 2: October 11, 2022 Letter from Emmanuela D’Ambrogio to the Auburn Regulatory Advisory Board.

The hearing started with opening arguments by Attorney Emmanuela D’Ambrogio for the Appellant. She then called Paul Brenton who is the Vice President for Legal of Appellant.

Appellant engaged Kroll to respond to, *inter alia*, Section 706-A requests from the City of Auburn. Mr. Brenton testified that he received the supplemental requests from the Assessor dated May 12, 2022, and inadvertently did not act on the requests such that a response was sent prior to the deadline or before the instant hearing. Robert Herman, Managing Director Tax Services Leader from Kroll then testified about his firm's engagement to respond to requests for information from the Assessor regarding the subject properties in this tax year and those prior to and subsequent. He testified about information that was provided in response to the Assessor's February 11, 2022 Section 706-A requests from the Assessor and reviewed BWPH 1, Ex. D and E<sup>1</sup>.

Attorney Sally J. Daggett then cross-examined Mr. Herman about information provided in BWPH 1 Exhibits D and E, which was provided to the Assessor on April 11, 2022. Neither witness for the Appellant could confirm or deny whether actual data regarding the properties, including actual information about income, expenses or generation, was available in 2022. No actual data from 2021 relating to the subject properties was provided to the Assessor's Office at any time prior to the instant hearing. Mr. Brenton confirmed that it was his address listed as the mailing address of the Appellant for both appeals and confirmed that he received the letters requesting information in February and May, 2022. (BWPH 1, Ex A).

Attorney Daggett inquired about questions #14 through #18 in the Assessor's May 12, 2022 letter, all of which sought underlying data in a PowerPoint presentation that was provided by Appellant in response to the Assessor's initial request for information on February 11, 2022. Mr. Brenton took the position that Appellant does not maintain the information requested, although Kroll does. Mr. Herman testified that Kroll had produced some of the requested data, including the data underlying the WACC calculation, to other municipalities for Appellant.

Attorney D'Ambrogio then examined Karen Scammon. Ms. Scammon testified that she sent the appeal denial letters on June 29, 2022. However, if she had received information after June that supported an abatement, then she would have considered it and potentially made an adjustment. No information was ever sent by the Appellant after May 12, 2022, including up through the subject hearing.

The parties agreed that Appellant bore the burden of proving that it was unable to provide the information requested by the Assessor pursuant to Section 706-A. The Assessor took the position that the Appellant did not meet its burden to prove that it was unable to provide the information requested by the Assessor. The Appellant took the position that it did provide the requested information and that whether it was 'unable' to provide the requested information should be interpreted as only what was known or knowable as of April 1, 2021.

Upon the conclusion of testimony and after hearing closing arguments from the parties, the Board made the following findings:

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<sup>1</sup> Non-public information in Exhibits D and E was deemed proprietary and confidential, and the Board moved into executive session to discuss such information but exited executive session after the discussion of such information had concluded.

1. The City Assessor's letters to Appellant on February 11, 2022 and May 12, 2022, were demands upon the taxpayer, Brookfield White Pine Hydro, LLC, that it provide information to the Assessor, and these demands were made while the taxpayer's request for an abatement was pending.
2. The taxpayer received both letters requesting information.
3. The Assessor's demands for information were all proper inquiries pertaining to the nature, situation and value of the taxpayer's property liable to be taxed in Auburn.
4. Appellant's responses to the Assessor's demands for information on April 11, 2022, were incomplete. Appellant never responded to the May 12, 2022 supplemental request letter.
5. Appellant failed to prove that it was unable to provide the requested information.

Based upon the testimony, exhibits, and arguments at the hearing, and upon the findings made by the Board, the Auburn Regulatory Advisory Board voted unanimously to bar the tax abatement applications for properties located at the following Map-Lot locations: 314-005, 315-001 and 326-007 ("*Deer Rips Hydro Facility*") and 347-011, 347-012, 347-017, 369-004 and 369-005 ("*Gulf Island Hydro Facility*") for the April 1, 2021 assessment date because the Appeals are barred pursuant to 36 M.R.S.A. 706-A on account of the taxpayer's failure to provide complete information to the City Assessor in response to her proper inquiries.

**Pursuant to 36 M.R.S. § 843(1-A), the Appellant may appeal this decision of the Regulatory Advisory Board to the State Board of Property Tax Review within 60 days of notice of this decision.**

REGULATORY ADVISORY BOARD

By: \_\_\_\_\_

Amy Dieterich, Secretary

cc: Karen Scammon, Assessor

