ATTACHMENT D

ENBRIDGE ENERGY, LIMITED PARTNERSHIP,
VS.
COMMISSIONER OF REVENUE,
AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
DOCKET NOS. 8579-R, 8631-R, 8771-R
MARCH 9, 2021

STATE OF MINNESOTA | TAX COURT

COUNTY OF RAMSEY | REGULAR DIVISION

Enbridge Energy, Limited Partnership, Appellant-Petitioner, vs. Commissioner of Revenue, Appellee-Respondent.	**AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Docket Nos. 8579-R, 8631-R, 8771-R Filed: March 9, 2021

These consolidated matters came before The Honorable Jane N. Bowman, Judge of the Minnesota Tax Court, on Enbridge Energy, Limited Partnership's motion for amended findings of fact, conclusions of law, and order for judgment.

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Jennifer A. Kitchak, Assistant Minnesota Attorney General, represents appellee-respondent Commissioner of Revenue.

At issue is the value as of January 2, 2012, January 2, 2013, and January 2, 2014, of the Minnesota portion of Enbridge Energy, Limited Partnership's (EELP) crude oil pipeline system. The court, having reviewed and considered the evidence adduced at trial[1] and the arguments of counsel, and upon all of the files, records, and proceedings herein, amends and supersedes its previous findings of fact, conclusions of law, and order for judgment as follows:

[1] The parties agreed that EELP's motion could be decided without reopening the record. The parties thus waived any right to introduce additional evidence as to the reconciliation or weighting of valuation approaches. Rehearing Tr. 3-4 (Dec. 9, 2020).

FINDINGS OF FACT

1. Appellant-petitioner Enbridge Energy, Limited Partnership, a Delaware limited partnership, has sufficient interest in the subject property to maintain this petition; all statutory and jurisdictional requirements have been fulfilled; and the court has jurisdiction over the subject matter of the action and the parties thereto.

2. The subject property is the Minnesota portion of the Lakehead system, an interstate petroleum pipeline that spans approximately 1,900 miles across the United States and Canada. In Minnesota, portions of the Lakehead system are located in Aitkin, Beltrami, Carlton, Cass, Clearwater, Hubbard, Itasca, Kittson, Marshall, Pennington, Polk, Red Lake, and St. Louis Counties.

3. EELP is controlled by Enbridge Energy Partners, L.P., a master limited partnership whose partnership units are traded on the New York Stock Exchange. In addition to EELP, Enbridge Energy Partners controls entities that own pipelines and related facilities in other parts of the country, including Enbridge Pipelines (North Dakota), LLC; Enbridge Pipelines (Bakken), LLC; and Enbridge Pipelines (Ozark), LLC. The ultimate parent of both EELP and Enbridge Energy Partners is Enbridge, Inc., which is also publicly traded on the New York Stock Exchange.

4. The Commissioner determined the market value of EELP's entire pipeline operating system to be $3,751,118,693 as of January 2, 2012.

5. The market value of EELP's entire pipeline operating system as of January 2, 2012, was $3,199,718,866, of which $985,743,790 is attributable to Minnesota.

6. The Commissioner determined the market value of EELP's entire pipeline operating system to be $4,180,770,714 as of January 2, 2013.

7. The market value of EELP's entire pipeline operating system as of January 2, 2013, was $3,216,940,619, of which $915,949,852 attributable to Minnesota.

8. The Commissioner determined the market value of EELP's entire pipeline operating system to be $5,605,458,900 as of January 2, 2014.

9. The market value of EELP's entire pipeline operating system as of January 2, 2014, was $3,501,716,925, of which $892,587,644 attributable to Minnesota.

CONCLUSIONS OF LAW

1. The highest and best use of the subject property as of January 2, 2012; January 2, 2013; and January 2, 2014, was as a portion of an interstate petroleum pipeline.

2. The Commissioner waived the prima facie validity of her January 2, 2012; January 2, 2013; and January 2, 2014 assessments before trial.

3. The Commissioner overstated the system unit-value of EELP's pipeline operating system as of January 2, 2012.

4. The Commissioner overstated the system unit-value of EELP's pipeline operating system as of January 2, 2013.

5. The Commissioner overstated the system unit-value of EELP's pipeline operating system as of January 2, 2014.

ORDER

1. The Commissioner shall reduce the system unit-value of EELP's pipeline operating system as of January 2, 2012, to $3,199,718,866, and shall adjust the value attributable to Minnesota to $985,743,790.

2. The Commissioner shall reduce the system unit-value of EELP's pipeline operating system as of January 2, 2013, to $3,216,940,619, and shall adjust the value attributable to Minnesota to $915,949,852.

3. The Commissioner shall reduce the system unit-value of EELP's pipeline operating system as of January 2, 2014, to $3,501,716,925, and shall adjust the value attributable to Minnesota to $892,587,644.

4. The Commissioner shall calculate the value of EELP's property "which is non-formula-assessed or which is exempt from ad valorem tax [and] is deducted from the Minnesota portion of the unit value" under Minn. R. 8100.0500 to arrive at EELP's taxable value, and shall file and serve that calculation no later than April 9, 2021.

5. No later than 15 days after service of the Commissioner's calculation, EELP may file and serve objections.

6. No later than 15 days after service of EELP's objections, the Commissioner may file and serve a response, if any.

7. If EELP files no objection to the Commissioner's calculation, the court will promptly file a final order for judgment. If EELP does file objections, the court will determine the appropriate deduction amount and EELP's taxable value, and then file a final order for judgment.

IT IS SO ORDERED.

BY THE COURT:

DATED: March 9, 2021

Jane N. Bowman, Judge
MINNESOTA TAX COURT

MEMORANDUM

Appellant-petitioner Enbridge Energy, Limited Partnership owns and operates an interstate petroleum pipeline system in Minnesota and throughout the upper Midwest and elsewhere. This court previously concluded the Commissioner of Revenue overvalued the EELP pipeline system as of all assessment dates. *Enbridge Energy, Ltd. P'ship v. Comm'r of Revenue*, No. 8579-R et al., 2019 WL 5995766, at *2 (Minn. T.C. Nov. 5, 2019). Upon EELP's motion for amended findings—and considering the supreme court's ruling in *Enbridge Energy, Limited Partnership v. Comm'r of Revenue (Enbridge II)*, 945 N.W.2d 859 (Minn. 2020)—this court now considers the limited question of what weighting to assign the income and cost approaches to valuation.[2]

I. PROCEDURAL HISTORY

At issue in these consolidated matters is the market value, as of January 2, 2012, January 2, 2013, and January 2, 2014, of the Minnesota portion of a common-carrier pipeline system (known as the Lakehead system) that transports mainly crude oil from Western Canada to refineries in the United States and eastern Canada. *Enbridge Energy*, 2019 WL 5995766, at *3. The Lakehead

[2] Assignment of weighting, sometimes known as reconciliation, "is the process in which different indications of value are converted into a value conclusion." Appraisal Institute, *The Appraisal of Real Estate* 599 (15th. ed. 2020).

system spans approximately 1,900 miles across the United States and Canada.[3] *Id.* In Minnesota, portions of the Lakehead system are located in several northern counties. *Id.* at *1.

Trial occurred from October 3, 2017, through October 10, 2017. *Id.* at *8. The court was asked to consider the three main approaches to value—market, cost, and income. *See id.* at *13-48. The market indicator, or sales comparison approach, assumes, among other things, "that the value of property tends to be set by the cost of acquiring a substitute or alternative property of similar utility and desirability within a reasonable amount of time." Appraisal Institute, *The Appraisal of Real Estate* 352 (15th ed. 2020). "The cost factor to be considered in the utility valuation formula is the original cost less depreciation of the system plan, plus" other enumerated items. Minn. R. 8100.0300, subp. 3. Generally, the income approach "is a method used … to convert a single year's income expectancy into a value indication." *Id.* at 459.

A. The Tax Court's May 15, 2018 Decision

On May 15, 2018, this court issued its first Findings of Fact and Conclusions of Law in these matters, concluding the Commissioner overstated the market value of the Lakehead system as of each assessment date. *Enbridge Energy, Ltd. P'ship v. Comm'r of Revenue*, No. 8579-R et al., 2018 WL 2325404, at *2 (Minn. T.C. May 15, 2018). Relevant here, EELP's appraisal, authored by Tegarden & Associates, considered but did not use or give any weight to a sales comparison approach (based upon the stock-and-debt method), doubting this approach had "any validity at all in the appraisal process."[4] EELP's rebuttal expert, Dr. Hal Heaton, Professor of

[3] A detailed summary of the subject property and the case's procedural history is found in the court's November 5, 2019 decision. *Enbridge Energy*, 2019 WL 5995766, at *3-10. The present decision contains a truncated procedural history that highlights the relevant portions.

[4] Trial Tr. 798 (Oct. 3-10, 2017) (referencing the 1954 treatise by Committee on Unit Valuation of the National Association of Tax Administrators); Ex. J13, at 85-86; Ex. J14, at 93; Ex. J15, at 109.

finance at Brigham Young University,[5] defended Tegarden's rejection of the sales comparison approach. *Id.* at *13. Although the Commissioner chose not to introduce evidence through an expert appraiser, *id.* at *7, the Commissioner likewise asked this court not to consider the sales comparison approach.[6] Relying on EELP's experts' conclusion that the sales comparison approach was not reliable, along with the Commissioner's request not to consider the sales comparison approach, this court did "not determine the market value of EELP's operating property under the sales comparison approach." *Id.* at *13-14.

Although both parties encouraged the court to consider the cost approach to valuation, *id.* at *15, the court "decline[d] to reach a determination of value under the cost approach," *id*. at *23. In rejecting the cost approach, the court reasoned that: (1) EELP was not rate-regulated during the years at issue; and (2) the tax court was not bound by the cost approach as prescribed in Minnesota Rule 8100. *Id*. at *15-*23.

Having previously rejected the sales comparison and cost approaches, the court was thus left with the income approach. *Id.* at *42. This court concluded, under the facts in these matters, "that the revenues generated and expenses incurred by EELP amount to rental income" and found "the income approach to valuation appropriate." *Id.* at *23. This court concluded to a total unit value of the Lakehead system of $3,595,398,000, $3,292,362,000, and $3,416,667,000 as of the respective assessment dates. *Id.* at *42.

[5] Trial Tr. 1100.

[6] Closing Argument Tr. 121 (Feb. 13, 2018); *see also* Comm'r's Post-Trial Proposed Findings Fact Conclusions Law ¶¶ 226-28 (filed Jan. 12, 2018) (asking the court to consider only the income and cost approaches).

B. *Enbridge I*

The Commissioner filed a discretionary appeal of the May 15, 2018 order, challenging this court's rejection of Rule 8100 as binding on the tax court. *Comm'r of Revenue v. Enbridge Energy, LP (Enbridge I)*, 923 N.W.2d 17, 19 (Minn. 2019). The supreme court granted review and analyzed this court's decision to reject the cost approach in light of Minnesota Administrative Rule 8100. Upon review, the supreme court held "the Rule applies not only to the Commissioner, but also—'by extension'—to the tax court." *Id.* at 22 (quoting *Minn. Energy Res. Corp. v. Comm'r of Revenue* (*MERC I*), 886 N.W.2d 786, 801 (Minn. 2016)). Having concluded the tax court erred by determining it was not bound by Rule 8100, this case was remanded "for proceedings consistent with" the supreme court's ruling. *Id.* at 22-23.

C. The Tax Court's November 5, 2019 Decision

On remand, this court "agree[d] with the Commissioner that the supreme court's decision require[d] us to modify our determination of value under the income approach, and that the record is sufficient to reach a determination of value under the cost approach." *Enbridge Energy*, 2019 WL 5995766, at *10. First, the court reevaluated its conclusions under the income approach. *Id.* at *16-33 (with Rule 8100 in mind, the court modified its estimates of net operating income). The court concluded to a system unit-value of the Lakehead system under the income approach of $2,947,220,888, $2,807,096,461, and $2,685,631,007, as of the respective assessment dates. *Id.* at *33.

As a result of *Enbridge I*'s ruling that this court is also bound by Rule 8100, the court then had occasion to conclude to a value under the cost approach. *Id.* at *33-45. Rule 8100.0300, subp. 3, details the manner in which the Commissioner, and the tax court, should value the utility property under the cost approach. This court concluded the Lakehead system was valued—as a

unit—at $4,209,710,781, $4,856,317,249, and $6,766,060,594, under the cost approach as of the assessment dates. *Id.* at *33-45.

Having determined the subject property's value under the income and cost approaches, this court then turned to the appropriate weight to be given each approach. *Id.* at *46-48. The Commissioner argued the income approach and the cost approach should be given equal weighting.[7] *See id.* at *46. EELP urged that Rule 8100 "requir[es] an equal weighting only in the absence of contrary evidence," *id.* at *47 (alternation in original), arguing this court should give the income approach "no less than 80% weight (100% if obsolescence is not recognized)," [8] *id.* (internal quotation marks omitted). This court concluded Rule 8100 required an equal weighting. *Id.* at *47-48. The court reasoned:

> Rule 8100.0300, subp. 5, dictates a default weighting of 50% to the cost approach and 50% to the income approach. Rule 8100.0300 dictates this weighting even though the pipelines being assessed under the Rule are, by definition, income-producing. In other words, in promulgating Rule 8100 the Commissioner has decreed that we are to give the income and cost approaches equal weight, *even though* the property being assessed is income-producing. Because administrative rules carry the force of statutes, for pipelines the Commissioner has effectively overruled caselaw that gives greater weight to the income approach for income-producing properties *simply because they are income-producing*. Similarly, Rule 8100 requires the cost approach be given 50% weight, regardless of the age of the assets being valued. In other words, the Commissioner has effectively overruled caselaw that gives less weight to the cost approach for older properties *simply because they are older*. EELP's arguments with respect to the weightings to be given to the cost and income approaches reflect nothing more than dissatisfaction with Rule 8100 itself.

Id. at *47 (footnote and citation omitted).

EELP timely filed a motion for amended findings, arguing this court erred in three respects: (1) by misapplying Rule 8100's reconciliation provisions; (2) by indiscriminately taxing

[7] Comm'r's Post-Trial Br. 32 (filed Jan. 12, 2018); Comm'r's Br. Remand 15-16 (filed Aug. 9, 2019).

[8] EELP's Mem. Remand 15, 20 (filed Aug. 9, 2019).

construction work in progress ("CWIP"); and (3) by making inadvertent numerical and computational errors in determining apportionable values.[9] EELP's motion, however, was stayed because the presiding judge had recently left the court.[10]

Although these matters were reassigned,[11] they were again stayed.[12] Prior to reassignment, on June 25, 2019, this court issued its findings of fact, conclusions of law, and order for judgment in EELP's two subsequent years' appeals (2015 and 2016). *Enbridge Energy, Ltd. P'ship v. Comm'r of Revenue*, Nos. 8858-R & 8984-R, 2019 WL 2853133 (Minn. T.C. June 25, 2019). After the court denied EELP's motion for rehearing, EELP appealed the 2015 and 2016 decision to the Minnesota Supreme Court. *See Enbridge Energy, Ltd. P'ship v. Comm'r of Revenue*, Nos. 8858-R & 8984-R, 2019 WL 5995805 (Minn. T.C. Nov. 5, 2019). EELP raised three issues on appeal: (1) the court's application of Rule 8100's reconciliation provisions; (2) the court's treatment of CWIP; (3) and the court's treatment of external obsolescence. *Enbridge II*, 945 N.W.2d at 865-72. Because the supreme court would be ruling on two of the three issues raised by EELP's motion for amended findings in the present matters, per the parties' request, this court stayed the current matters until after the supreme court ruled on the two subsequent years' appeals.[13] The supreme court filed its decision, known as *Enbridge II*, on July 8, 2020. 945 N.W.2d 859.

[9] EELP's Not. Mot. & Mot. Am. Findings (filed Nov. 27, 2019); EELP's Mem. Law Support Mot. Am. Findings (filed Nov. 27, 2019).

[10] Stay Order (filed Dec. 10, 2019).

[11] Not. Judicial Reassignment (filed Jan. 15, 2020).

[12] Stay Order (filed Feb. 7, 2020).

[13] Stay Order (filed Feb. 7, 2020).

D. *Enbridge II*

The Minnesota Supreme Court ruled on all three issues raised by EELP. *Id.* at 865-72. It first addressed EELP's claim regarding the treatment of CWIP expenses, holding that "the tax court did not err." *Id.* at 866, 865-68. The supreme court next evaluated EELP's claim that this court "erred in its calculation of external obsolescence." *Id.* at 868. Although concluding this court "appear[ed] to have confused the method of proof required under the direct comparison method with method of proof for industry-wide obsolescence," *id.* at 869, the supreme court nevertheless held the "tax court's misstatement of law was harmless error" and affirmed the tax court's decision on external obsolescence, *id.* at 871.

Finally—and relevant here—the supreme court evaluated "whether the tax court erred by placing equal weight on the cost and income indicators of value to calculate the unit value of the pipeline system." *Id.* at 871. In holding this court erred by applying equal weight, the supreme court said:

> As we explained in *MERC I*—and again in *Enbridge I*—the rules recognize that the Commissioner—and thus the tax court—has the discretion to depart from the valuation formula "whenever the circumstances of a valuation estimate dictate the need for it." Minn. R. 8100.0200; *see also Enbridge I*, 923 N.W.2d at 21; *MERC I*, 886 N.W.2d at 801. In failing to recognize that it had the discretion to depart from the default weightings if dictated by the circumstances of the case, the tax court erred as a matter of law.

Enbridge II, 945 N.W.2d at 872. In reversing and remanding "for the limited purpose of allowing the tax court to consider whether the circumstances of this case dictate a need to depart from the default weightings," the supreme court noted that if this court concludes that "the circumstances so dictate, [the court] must 'fully explain its reasoning.' " *Id.* (citing *Enbridge I*, 923 N.W.2d at 22).

Following the supreme court's ruling in *Enbridge II*, this court lifted the stay on the current cases and allowed EELP to re-brief its motion for amended findings.[14]

E. EELP's Amended Motion for Amended Findings

With its amended motion for amended findings, EELP again asks this court : (1) to use its discretion to depart from Rule 8100's default weighting provision and adopt the reconciliation percentages advocated by EELP's appraiser at trial; and (2) to correct inadvertent numerical and computation errors.[15] In response, the Commissioner argues that under "the legal standard clarified by the Minnesota Supreme Court, [this court] *may* exercise discretion to deviate from the default equal weightings in Rule 8100 if the circumstances of the valuation so dictate, but those circumstances are not present in this case." [16]

On a proper motion, this court may "amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered." Minn. R. Civ. P. 52.02; *see also* Minn. Stat. § 271.08, subd. 1 (2020) (authorizing motions for amended findings and conclusions of law). A motion for amended findings authorizes a court "to review all of the evidence and all of [its] findings" and to revise its findings in a manner either favorable or unfavorable to the moving party. *McCauley v. Michael*, 256 N.W.2d 491, 499-500 (Minn. 1997). Ultimately, this court is "free to examine all of the evidence …, and then to enter amended findings as appear … warranted by [its] review of the record as a whole." *Id.* at 500.

Moreover, the supreme court, in reversing and remanding *Enbridge II* on virtually the identical weighting issue, directed this court to reevaluate its decision concerning EELP's

[14] Order Lifting Stay & Briefing (filed Aug. 27, 2020).

[15] EELP's Am. Mem. Law Supp. Post-Trial Mot. 3 (filed Sept. 25, 2020). EELP is no longer asking this court to amend its CWIP-related findings. *See id.*

[16] Comm'r's Mem. Opp'n EELP's Mot. Am. Findings 1 (filed Oct. 23, 2020).

subsequent years' appeal "for the limited purpose of allowing the tax court to consider whether the circumstances of this case dictate a need to depart from the default weightings." 945 N.W.2d at 872. This court agrees with EELP that the supreme court's decision in *Enbridge II* requires us to modify our previous determination to assign a 50 percent weighting to each of the income and cost approaches to value, and that the record is sufficient to reach a determination on proper weighting. *See Enbridge Energy*, 2019 WL 5995766, at *46-48.

II. GOVERNING LAW

In valuing property generally, this court is not required to give weight to all three valuation approaches, and we may place greater emphasis on one or more particular approaches. *Equitable Life Assur. Soc'y of U.S. v. Cty. of Ramsey*, 530 N.W.2d 544, 554 (Minn. 1995). The use of multiple approaches to determine market value is "usually appropriate and necessary" because "the alternative value indications derived can serve as useful checks on each other." *Id.* at 553. "The appraiser's judgment and experience, and the quantity and quality of data available, may determine which approach or approaches are used and what weight each deserves." *Id.*; *see also Nw. Racquet Swim & Health Clubs, Inc. v. Cty. of Dakota*, 557 N.W.2d 582, 587 (Minn. 1997) ("[T]he three valuation approaches are neither exclusive nor mandatory and the quantity and quality of available data ultimately determines which approaches are useful and how much weight each is given."); *Lewis & Harris v. Cty. of Hennepin*, 516 N.W.2d 177, 180 (Minn. 1994) ("Whatever weight priority may usually attach to each approach, the priority and quantum of reliance depends on the facts of each case.").

The income approach oftentimes receives considerable weight if the subject property is an income-producing asset. *KCP Hastings, LLC v. Cty. of Dakota*, 868 N.W.2d 268, 275-76 (Minn. 2015) (noting "the 'over-riding weight' often afforded to the income approach in valuations

involving income-producing properties" (quoting *Montgomery Ward & Co. v. Cty. of Hennepin*, 450 N.W.2d 299, 308 (Minn. 1990))). Nevertheless, "[t]he respective weight placed upon each of the three traditional approaches to value depends on the reliability of the data and the nature of the property being valued." *Menard Inc. v. Cty. of Clay*, 886 N.W.2d 804, 819-20 (Minn. 2016) (quoting *Harold Chevrolet v. Cty. of Hennepin*, 526 N.W.2d 54, 59 (Minn. 1995)).

The cost approach generally does not lend itself to accurate valuations of older properties. *See, e.g.*, *Menard Inc.*, 886 N.W.2d at 820-21 (affirming the tax court's reliance on the cost approach given the property's "recent vintage"); *Sears, Roebuck & Co. v. Cty. of Dakota*, Nos. C4-04-7619 & C8-05-7374, 2007 WL 2481290, at *3 (Minn. T.C. Aug. 30, 2007). Pipelines, such as the Lakehead system, however, are special purpose properties, which can be reliably valued using the cost approach. *See, e.g.*, *Guardian Energy, LLC v. Cty. of Waseca*, 868 N.W.2d 253, 261-62 (Minn. 2015).

A. *The Appraisal of Real Estate*'s

Although this court is not bound by the methods and theory outlined in *The Appraisal of Real Estate* ("*TARE*"), this treatise has often been relied upon by courts for guidance. *E.g.*, *Archway Mktg. Servs. v. Cty. of Hennepin*, 882 N.W.2d 890, 894 (Minn. 2016) (relying on *TARE*'s guidance when evaluating a related party sale). According to *TARE*, the "strengths and weaknesses of each of the approaches used, and the quantity and quality of the data analyzed, must be considered and addressed in an appraisal report, and an appraiser must explain why one approach may have been relied upon more than another …." *The Appraisal of Real Estate* 599-600. Further, a "discussion of the data analyzed and its application to the subject, how the approaches apply to the subject, and other relevant information is essential to a meaningful reconciliation." *Id.* at 602.

B. Administrative Rule 8100

This court is bound by Minnesota Administrative Rule 8100 when valuing utilities, including the Lakehead system. *Enbridge I*, 923 N.W.2d at 22. Concerning valuation, the Rule begins by noting "[a]ll indicators of value must be considered to determine their validity relating to the specific property being valued. If an indicator is not demonstrated to be reliable or of value for the specific property being appraised it must not be used." Minn. R. 8100.0300, subp. 1. The Rule explains in detail the way in which the court must determine value indicators under the cost and income approaches.[17] *Id.*, subps. 3, 4.

When reconciling the indicators of value, Rule 8100 assigns "default weightings of the indicators [as]: market indicator, 0 percent; cost indicator, 50 percent; income indicator, 50 percent." *Id.*, subp. 5. There are, however, several provisions in Rule 8100 that grant the court discretion to deviate from these default weightings. The introductory section of the Rule states:

> The commissioner of revenue reserves the right to exercise discretion whenever the circumstances of a valuation estimate dictate the need for it. Discretion may be used to ensure a balance between a prescriptive rule and sound appraisal judgment; to ensure that all relevant data pertaining to value is considered; to ensure that a reasonable estimate of market value is derived; to address concerns of predictability and stability in estimations of market value; and to ensure that utility valuation is easily understood and administered.

Minn. R. 8100.0200. Further, "[a]dditional indicators of value, other than the cost and income indicators, may exist in some situations. When additional indicators of value exist, the commissioner has the discretion to use these additional indicators in computing the unit value …." Minn. R. 8100.0300, subp. 4a.[18] If additional indicators of value are considered, this court "must

[17] This court previously made value determinations under these approaches, which are not disputed on remand. *Enbridge Energy*, 2019 WL 5995766, at *45.

[18] This subpart limits any market indicator to five percent of the weighting. Minn. R. 8100.0300, subp. 4aA. Since this court determined the market indicator was not reliable, this limitation is not relevant here. *Enbridge Energy*, 2019 WL 5995766, at *16.

state in writing the findings that necessitate the deviation from the default weightings of 50 percent for cost indicator and 50 percent for income indicator …." *Id.*, subp. 4aC. Within the context of Rule 8100, the tax court has the authority "to consider whether the circumstances of [a] case dictate a need to depart from the default weightings." *Enbridge II,* 945 N.W.2d at 872.

With this background and governing principles, this court turns to the evidence and arguments presented by counsel.

III. RECONCILING THE INCOME AND COST APPROACHES TO VALUE

EELP argues for a weighting of 80% on the income approach and thus 20% on the cost approach.[19] The Commissioner, acknowledging that this court is not bound by a 50/50 weighting, still advocates for such weighting, stating EELP "has not pointed to any factor that necessitates deviating from the default" 50/50 weighting.[20] This court agrees with EELP that, after considering the evidence as a whole, the circumstances of this case dictate the need to depart from the default weightings as follows: 80% to the income approach; and 20% to the cost approach.

A. Record Evidence

EELP begins by pointing to its appraisal, noting that Tegarden & Associates placed approximately 80% weight on the income approach for each year.[21] Tegarden stated that "[r]econciliation is not just a simple weighing of three approaches; it's the weighing of information used in the various approaches." [22] After giving the cost approach "due" consideration, Tegarden

[19] EELP's Am. Mem. Supp. Post-Trial Mot. 5.

[20] Comm'r's Mem. Opp'n 1.

[21] EELP's Am. Mem. Supp. Post-Trial Mot. 5; Ex. J13, at 87-89; Ex. J14, at 94-96; Ex. J15, at 110-12. The Tegarden reports do not specifically state it placed 80% weight on the income approach. Ex. J13, at 87-89; Ex. J14, at 94-96; Ex. J15, at 110-12. The math indicates Tegarden placed slightly higher than 80% on the income approach for all three years. *See id.*

[22] Ex. J13, at 87; Ex. J14, at 94; Ex. J15, at 110.

explained why it gave the income approach "considerable weight": "A prospective purchaser of oil pipeline property would very carefully consider the earning capability of the property." [23]

The Commissioner did not during trial introduce into evidence a written appraisal report or call as a witness an expert appraiser. Having failed to present reconciliation evidence contrary to Tegarden's, the Commissioner cannot persuasively explain why Tegarden's reconciliation conclusion should not be given considerable weight. Although this court is ultimately tasked with determining the proper weighting using our own skill and independent judgment, this court must consider the evidence before it. *Eden Prairie Mall, LLC v. Cty. of Hennepin*, 797 N.W.2d 186, 192-94 (Minn. 2011); *see Inland Edinburgh Festival, LLC v. Cty. of Hennepin*, 938 N.W.2d 821, 825 (Minn. 2020) (this court's decisions must be reasonably supported by the record as a whole). With the only expert to testify to a conclusion of value placing approximately 80% weight on the income approach, Tegarden's weighting is compelling evidence.

The Commissioner argues that since the subject is a special purpose property that lends itself to valuation using the cost approach, the weighting should be equal.[24] EELP counters that as in income-producing property, any investor would place more weight on the approach that values its income stream.[25] The supreme court has recognized the importance of the income approach when valuing income-producing properties. *KCP Hastings*, 868 N.W.2d 268, 275 ("We have 'recognized the usefulness of the income approach in valuing income producing properties.' " (citing *Nw. Racquet*, 557 N.W.2d at 587).

[23] Ex. J13, at 87; Ex. J14, at 94; Ex. J15, at 110.

[24] Comm'r's Mem. Opp'n 5-6.

[25] EELP's Am. Mem. Supp. Post-Trial Mot. 6-9.

The parties do not dispute the Lakehead system is income-producing. *See Enbridge Energy*, 2019 WL 5995766, at *16. Here, evidence in the record shows that any investor in the Lakehead system would look to the property's income earning potential, which in turn, supports placing heavy reliance on the income approach. EELP's witnesses, including its two experts, testified that an interested investor would be most attuned to the income-producing potential of a utility. Mr. Tegarden, EELP's appraiser, testified that investors in an income-producing property rely most heavily on the income approach.[26] Additionally, Dr. Hal Heaton, testified that "the income approach trumps the cost approach." [27]

Mr. Maki, President of Enbridge Energy Management, testified that "when a bank or a fund" is deciding to invest in the Lakehead system, they look to its "income and cash flow." [28] While a bank or fund would not seek to purchase the Lakehead System outright, their method of valuation provides supporting evidence. Finally, Ms. Stephanie Nyhus, a member of the Commissioner's state-assessed property section, testified as follows:

> Q: Do investors generally purchase based on income as opposed to cost?
> A: I think they look at both.
> Q: Do they favor one over the other?
> A: Ultimately, I think they want a return on their investment so they would look at the income. However, I do think they look at both because the income may be lagging a little bit on the cost.[29]

[26] Trial Tr. 802-05. Mr. Tegardan also provided a useful example of when another approach is most useful. He testified—and logic dictates—the sales comparison approach is most useful when valuing residential real estate, as there are usually plenty of sales upon which to rely. *Id.*

[27] Trial Tr. 1107-08.

[28] Trial Tr. 15, 106.

[29] Trial Tr. 402, 452.

Ms. Nyhus's emphasis on the income approach supports placing greater weight on that approach, but also placing some weight on the cost approach. As an income-producing property, any investor in the Lakehead System would base its valuation on its income potential.

The parties dispute the effect of the age of the Lakehead System and the amount of recent investment and how that affects the reliability of the cost approach. Specifically, the Commissioner asks us to place 50% weight on the cost approach, arguing that the line was expanded in the 1960s and 1970s, and "was expanded again quite substantially in the 2010 timeframe." [30] Additionally, the Commissioner points to a significant amount of CWIP ($488,476,783 for year-end 2011; $921,685,103 for year-end 2012; and $1,607,043,659 for year-end 2013), implying these recent investments support the cost approach.[31] EELP responds the age of the Lakehead System makes the cost approach inherently less reliable.[32] EELP notes that with construction of the pipeline beginning in the 1940s, the pipeline is "of sufficient age to dilute the usefulness of a cost approach." [33] EELP further points out that the "enormous CWIP expenditures dimmish, rather than enhance, the reliability of the cost approach." [34] This is so, EELP argues, because much of the costs went to cleaning up oil spills (exceeding one billion dollars), EELP was assessed civil penalties amounting to 62 million dollars, and EELP replaced

[30] Comm'r's Mem. Opp'n 7; *see* Trial Tr. 23.

[31] Comm'r's Mem. Opp'n 7-8 (citing Ex. J25 at EN000626, line 45; Ex. J26 at MNDOR001095, line 45; Ex. J27 at EN-4582, line 45). During oral argument, the Commissioner also argued Exhibit 10 shows the majority of CWIP expenditures went to expansionary, verses maintenance, projects. Rehearing Tr. 31-32.

[32] EELP's Am. Mem. Supp. Post-Trial Mot. 6; EELP's Reply 6 (filed Nov. 5, 2020).

[33] EELP's Reply 6.

[34] EELP's Reply 7.

one of the failing pipelines.[35] *See Enbridge Energy*, 2019 WL 5995766, at *5-6. Without expert testimony from the Commissioner linking these arguments to the current case, this court declines to reduce the weighting of the income approach.

Finally, the Commissioner argues the record does not support crediting EELP with additional obsolescence through weightings.[36] The Commissioner points to *Enbridge II*,[37] which states: "obsolescence may affect the reliability of the cost indicator of value. If the commissioner finds that obsolescence exists, the commissioner has the discretion to adjust the weightings *or* make other adjustments in its methodology consistent with the rules and applicable statutes. Minn. R. 8100.0300, subp. 4aB." *Enbridge II*, 945 N.W.2d at 865 (emphasis added). This court previously found, and adjusted the cost approach for, obsolescence. *Enbridge Energy*, 2019 WL 5995766, at *45. The Commissioner argues that since obsolescence has already been accounted for, "no further adjustment is required by deviating from the default weightings."[38] But this argument misapprehends both the standard outlined by the supreme court in *Enbridge II* and the text of Rule 8100. In quoting the Rule, the supreme court stated "the Commissioner—and thus the tax court—has the discretion to depart from the valuation formula 'whenever the circumstances of a valuation estimate dictate the need for it.' Minn. R. 8100.0200." *Enbridge II*, 945 N.W.2d at 872. In other words, this court may deviate from the default weightings when the circumstances dictate a need for it. This court is not limited to only when additional obsolescence is identified.

[35] EELP's Reply 7. At the time of trial, EELP had recovered $547,000,000 from insurance for spill clean-ups. Trial Tr. 92-93. EELP would also recover all but $30,000,000 of the cost of replacing its Line 6B through a Federal Energy Regulatory Commission-approved facilities surcharge mechanism. *Enbridge Energy*, 2019 WL 5995766, at *5, *40.

[36] Comm'r's Mem. Opp'n 9.

[37] Comm'r's Mem. Opp'n 9.

[38] Comm'r's Mem. Opp'n 9.

B. Final Reconciliation

Given the circumstances—the record evidence and appraisal theory—we agree the income approach should be afforded 80% weight and the cost approach should be given 20% weight. The driving factors described above, specifically expert testimony supporting the weighting, which is based upon sound appraisal theory favoring the income approach and shying away from the cost approach, support the court's weighting. Put another way, this court's deviation from Rule 8100's default weightings is strongly supported by the evidence, *Enbridge II*, 945 N.W.2d at 872, resulting in "all relevant data … ensure[ing] that a reasonable estimate of market value is derived," Minn. R. 8100.0200. The amended Lakehead System unit values are as follows:

Lakehead System Unit Values[39]			
2012 Income Approach	$2,947,220,888	80%	$2,357,776,710
2012 Cost Approach	$4,209,710,781	20%	$841,942,156
2012 Unit Value			**$3,199,718,866**
2013 Income Approach	$2,807,096,461	80%	$2,245,677,169
2013 Cost Approach	$4,856,317,249	20%	$971,263,450
2013 Unit Value			**$3,216,940,619**
2014 Income Approach	$2,685,631,007	80%	$2,148,504,806
2014 Cost Approach	$6,766,060,594	20%	$1,353,212,119
2014 Unit Value			**$3,501,716,925**

We note this decision comports with other tax court decisions, even though the aforementioned record and case law entirely supports the decision in these matters. For example, this court rejected the default weightings and relied on expert testimony to weight the income approach at 80% and the cost approach at 20% in *MERC. Minn. Energy Res. Corp. v. Comm'r of Revenue*, No. 8041, 2014 WL 4953754, at *18 (Minn. T.C. Sept. 29, 2014), *amended*, 2015 WL 213779 (Minn. T.C. Jan. 9, 2015), *aff'd in part and rev'd in part on other grounds*, 886 N.W.2d

[39] *Enbridge Energy*, 2019 WL 5995766, at *45.

786 *(MERC 1)* (Minn. 2016). EELP urges us to rely on *MERC I* as the supreme court's approval of deviating from Rule 8100's default weightings.[40] We decline to read the supreme court's decision in *MERC I* as directly approving this court's 80/20 weighting, but raise it here to show past decisions were based on circumstances that dictated the need to depart from the Rule's default weightings. The same is true here. Additionally, this court's decision in *CenterPoint Energy Resources Corp. v. Commissioner of Revenue*, provided a 60% income approach and 40% cost approach weighting. No. 9125-R, 2020 WL 4045620, at *23 (Minn. T.C. July 15, 2020). In that case, because CenterPoint Energy was rate-regulated, its "income [was] driven by the cost." *Id.* at *22-23. With two approaches that are fundamentally linked, the circumstances dictated the weightings be more evenly split.

IV. ALLOCATION TO MINNESOTA

Having determined the unit values of EELP's pipeline system as of each valuation date, the next step is the allocation of those unit values between Minnesota and the other states (and Canada) in which EELP operates. *See* Minn. R. 8100.0400.

This court previously adopted percentages of system unit-value for Minnesota for each year under assessment as follows: allocating 30.8072% of the 2012 system unit-value to Minnesota; 28.4727% for 2013's system unit-value to Minnesota; and 25.49% for 2014's system unit-value to Minnesota. *Enbridge Energy*, 2019 WL 5995766, at *48-49. Neither party appealed these percentages, and thus this court applies them again here, as follows:

Tax Year	Unit Value	Allocation Percentage	MN Allocation
2012	$3,199,718,866	30.8072	$985,743,790
2013	$3,216,940,619	28.4727	$915,949,852
2014	$3,501,716,925	25.49	$892,587,644

[40] EELP's Am. Mem. Supp. Post-Trial Mot. 8; Rehearing Tr. 14, 40.

V. DEDUCTION OF EXCLUDABLE PROPERTY

Once the value of the system as a unit has been allocated between Minnesota and the other states in which the system is located, it must be reduced by the amount of property included in unit value that is not subject to property tax or is "non-formula-assessed." *See* Minn. R. 8100.0500. Among the statutory property exemptions is one for pollution control equipment. Personal property is exempt from taxation if "used primarily for the abatement and control of air, water, or land pollution … to the extent that it is so used." Minn. Stat. § 272.02, subd. 10 (2020). The parties agree that EELP is entitled to the exemption for pollution control property in the amount of $27,611,093 as of each valuation date. *Enbridge Energy*, 2019 WL 5995766, at *50.

In addition to pollution control equipment, we exclude from allocated Minnesota system unit-value amounts for locally assessed and nontaxable property. *See* Minn. R. 8100.0500, subp. 1. This court previously determined the *cost* of such excludable property, which the parties do not appear to dispute.[41] *Id.* at *50-51. Part of process to reach the *value* of excludable property, however, involves determining the ratio of overall system unit-value to system unit-cost. Minn. R. 8100.0500, subp. 3. Because we have concluded to a new system unit-value, we remand the matters to the Commissioner to calculate the value of EELP's property "which is non-formula-assessed or which is exempt from ad valorem tax [and] is deducted from the Minnesota portion of the unit value" under Minn. R. 8100.0500 to arrive at EELP's taxable value.

J.N.B.H.

[41] EELP's Mem. Law Supp. Mot. Am. Findings (filed Nov. 27, 2011); EELP's Am. Mem. Supp. Post-Trial Mot. 10 & n.8, 11 n.9; Comm'r's Mem. Opp'n 10-11 & Ex. A.