

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0272

CLYDE A. "ROCK" GISCLAIR,
ASSESSOR FOR ST. CHARLES PARISH

VERSUS

THE LOUISIANA TAX COMMISSION
(RE: AUGUST 12, 2008 DECISION
IN COMMISSION DOCKET)

Judgment Rendered: May 7, 2010.

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 570,485

The Honorable Wilson Fields, Judge Presiding

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BEFORE: CARTER, C.J., GUIDRY AND PETTIGREW, JJ.

Guidry, J. concurs in the result.

CARTER, C. J.

Clyde A. “Rock” Gisclair, assessor for St. Charles Parish, appeals a decision of the district court that affirmed the August 12, 2008 decision of the Louisiana Tax Commission (“LTC”), which concerns the LTC’s 2006 tax assessment and valuation of the public service properties of Entergy Louisiana, Inc. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

This appeal arises in the ongoing litigation between Gisclair and the LTC concerning the LTC’s determinations as to the fair market value and taxable value of Entergy’s properties. For a complete background of this matter, see **Gisclair v. Louisiana Tax Commission**, 08-1616 (La. App. 1 Cir. 10/31/08) (unpublished), reversed, 09-0007, 09-0008 (La. 6/26/09), 16 So.3d 1132 (**Gisclair I**), and **Gisclair v. Louisiana Tax Commission**, 09-2047 (La. App. 1 Cir. 2/12/10) (unpublished) (**Gisclair II**). It is clear from the prior opinions in this litigation that Gisclair has raised substantially the same arguments as to the LTC’s methods of valuing Entergy’s public service properties for multiple tax years.¹ This appeal concerns Gisclair’s claims as to the correctness of the valuation for the 2006 tax year.

The LTC centrally valued and assessed all of Entergy’s properties for the 2006 tax year and determined the assessed valuation to be \$2,150,000,000.00. The LTC then allocated that value among the parishes in which the properties are located. Since 46% of the company’s property is located in St. Charles Parish, the total assessed value to St. Charles Parish

¹ Neither **Gisclair I** nor **Gisclair II** decided the merits of Gisclair’s challenges. Rather, both **Gisclair I** and **II** focused on jurisdictional aspects to Gisclair’s challenges.

was \$191,674,280.00. Entergy did not contest the valuation and paid its 2006 ad valorem taxes without protest.

Gisclair challenged the 2006 assessment utilizing LTC Rule 2907,² which allowed assessors to file exceptions to the assessed value of a company. After discovery was conducted, the LTC held a hearing, then considered Gisclair's claims at an open meeting. The LTC denied Gisclair's exceptions and upheld the determination of Entergy's assessed value. Thereafter, Gisclair filed a "Petition & Appeal" in the 19th Judicial District Court, wherein he sought judicial review of the LTC's decision as provided for in the Administrative Procedure Act ("APA"). The district court affirmed the LTC's decision. Gisclair now seeks appellate review by this court.

STANDARD OF REVIEW

The Louisiana Administrative Procedure Act (APA), at LSA-R.S. 49:964G, governs the judicial review of a final decision in an agency adjudication, providing that:

G. 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:

² Before its repeal in March of 2007, LTC Rule 2907 provided:

A. On or before September 15 or within 15 days after the commission has certified the assessed value of a company to an assessor, whichever is later, an assessor may file an exception to the assessed value of the company, or to the allocation of the assessed value to one or more parishes, in writing, with the commission together with evidence in support of the exception. If, in the exception, a hearing is requested, it shall be held in accordance with the administrative procedure act.

B. Notwithstanding the fact that an exception has been filed to the valuation or allocation of public service property, the assessment shall be entered on the rolls as it was originally reported to the assessor until or unless a change order is issued by the commission.

- (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 the 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. 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 manifest error test is used in reviewing the facts as found by the administrative tribunal; the arbitrary and capricious test is used in reviewing the administrative tribunal's conclusions and its exercise of discretion. **Save Ourselves, Inc. v. La. Environmental Control Commission**, 452 So.2d 1152, 1159 (La. 1984). On legal issues, the reviewing court gives no special weight to the findings of the administrative tribunal, but conducts a *de novo* review of questions of law and renders judgment on the record. **Eicher v. Louisiana State Police**, 97-0121 (La. App. 1 Cir. 2/20/98), 710 So.2d 799, 803, writ denied, 98-0780 (La. 5/8/98), 719 So.2d 51.

Any one of the six bases listed in the statute is sufficient to modify or reverse an agency determination. **Wild v. State, Dept. of Health and Hospitals**, 08-1056 (La. App. 1 Cir. 12/23/08), 7 So.3d 1, 4. The APA further specifies that judicial review shall be conducted by the court without a jury and shall be confined to the record. LSA-R.S. 49:964F.

When reviewing an administrative final decision, the district court functions as an appellate court. Once a final judgment is rendered by the district court, an aggrieved party may seek review by appeal to the appropriate appellate court. On review of the district court's judgment, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. **Maraist v. Alton Ochsner Medical Foundation**, 02-2677 (La. App. 1 Cir. 5/26/04), 879 So.2d 815, 817. Consequently, this court will conduct its own independent review of the record in accordance with the standards provided in LSA-R.S. 49:964G.

DISCUSSION

At issue in this appeal is the valuation of Entergy's public service properties.³ Louisiana Constitution Article VII §18D mandates that the LTC value public service properties at fair market value. To accomplish the valuation, the LTC performs a "unit" valuation, meaning that the LTC values the entire property of the taxpayer as a unit, then apportions the value among the affected parishes. Louisiana Revised Statute 47:1853 specifies the means of conducting the valuation, providing, in pertinent part:

B. (1) In appraising public service properties, the Louisiana Tax Commission shall:

(a) Employ all of the following nationally recognized techniques of appraisal, where applicable, to best determine fair market value:

³ Entergy is not a party to these proceedings. This court has the discretion to recognize the failure to join a party needed for just adjudication. LSA-C.C.P. arts. 641, 645. We feel that Entergy should have been made a party to these proceedings. However, because our review of the record in this matter convinces us that the LTC's decision is correct and should be affirmed, and in the interest of judicial efficiency, we decline to notice the failure to add Entergy as a party.

(i) The market approach.

(ii) The cost approach.

(iii) The income approach.

(b) Assign such weight to each approach as is appropriate to best determine fair market value.

(2) However, all public service properties of the same nature and kind shall be appraised in the same manner. The appraised value of all lands owned by the company in this state shall be deducted from the total appraised value of the public service properties and shall be assessed by the Louisiana Tax Commission and shown as a separate item on the tax roll.

In the recent case of **Transcontinental Gas Pipeline Corp. v. LA Tax Commission**, 09-1998, 09-1989, 09-1990, 09-1991, 09-1992 (La. 3/16/10), ___ So.3d ___, the supreme court examined in great detail the LTC's methodologies and procedures for arriving at a valuation for assessment of public service properties (in that case interstate natural gas pipeline companies), stating:

The interstate and intrastate companies that are assessed at 25 percent (25%) of their fair market value, "public service properties," are statutorily required to be assessed centrally by the Louisiana Tax Commission. See La. R.S. 47:1853. The Louisiana Legislature saw fit to require that "public service properties" due to their nature as "public service properties" should be appraised according to a certain method by the LTC. When appraising "public service property," the LTC utilizes a combination of all three of the nationally recognized techniques of appraisal as listed in La. R.S. 47:1853(B). For pipelines, the LTC has adopted the "unit" method, in which the entire operating property is valued as a unit without functional or geographic division of the whole, considering the income the property produces. The record reflects that the method adopted by the LTC in valuing "public service property" is a method typically used in approximately 35 other states. The benefit of such an operation is that an appraiser is viewing the entire operation considering all of the parts, and not just individual contributions of some parts of the whole. Using this approach, an appraiser looks to the value of the business itself or the going concern of the company, and not just the hard assets of the company. The record also reflects that this method is a proper assessment method for rate-regulated entities that

qualify as “public service property,” which includes interstate companies and intrastate companies who sell to local distributing systems, as it only makes sense to appraise the property in this manner, because they report to and are rate-regulated as an entire unit by the [Federal Energy Regulatory Commission] or the [Louisiana Public Service Commission] respectively.

Transcontinental Gas Pipeline Corp., ___ So.3d at ___. (Footnote omitted.)

The supreme court further reasoned:

[T]here is some indication in the record that the cost approach, utilized by the parish assessors, regularly values property higher than property which has been valued on the unit method
. . . The overall implication from the record, however, is that, typically, the method currently used by the parish assessors to assess the fair market value of pipes within their parishes comes out higher than the method used by the LTC, such that the plaintiffs’ tax burden could likely increase if they were treated like their claimed favored competitors, the unregulated intrastate companies. . . .

This may be an imperfect appraisal system, as appraisal is an imperfect science to begin with, but interstate commerce is simply not burdened if the interstate companies are actually paying less than they would if they were valued like their claimed favored intrastate competitors.

Transcontinental Gas Pipeline Corp., ___ So.3d at ___. (Footnote omitted and emphasis added.)

We have reviewed the administrative record in this case in light of the standards set forth in LSA-R.S. 49:964, cited *supra*. While Gisclair presented a reasonable alternative means of assessing and valuing public service properties, public service property assessments are legislatively required to be appraised according to a certain method by the LTC.

Transcontinental Gas Pipeline Corp., ___ So.3d at ___. We find that the administrative record reasonably supports the LTC’s written opinion denying Gisclair’s exceptions to the appraisal of Entergy’s properties.

Accordingly, we find no basis for remand or reversal under LSA-R.S. 49:964.

CONCLUSION

For the foregoing reasons, the judgment of the district court that affirmed the decision of the Louisiana Tax Commission is affirmed. Costs of this appeal in the amount of \$1,303.50, are assessed to Clyde A. Gisclair, assessor for St. Charles Parish.

AFFIRMED.