

STATE OF MINNESOTA

IN SUPREME COURT

A19-1875

Tax Court

McKeig, J.

Enbridge Energy, Limited Partnership,

Relator,

vs.

Filed: July 8, 2020
Office of Appellate Courts

Commissioner of Revenue,

Respondent.

Paul B. Kilgore, Eric S. Johnson, Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota, for relator.

Keith Ellison, Attorney General, Jennifer A. Kitchak, Assistant Attorney General, Saint Paul, Minnesota, for respondent.

Andrew M. Carlson, Claire V.J. Joseph, Brandon L. Blakely, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota; and

Darla S. Zink, Northern Natural Gas Company, Omaha, Nebraska, for amicus curiae Northern Natural Gas Company.

S Y L L A B U S

1. The tax court did not clearly err in its calculation of construction work in progress.

2. Although the tax court misstated the law regarding the burden of proving obsolescence, that misstatement was harmless because the tax court did not clearly err in giving little weight to relator's evidence of external obsolescence.

3. Because Minnesota Rule 8100.0200 (2019) allows the tax court to exercise discretion when the circumstances of a valuation estimate dictate the need for it, the tax court erred by concluding that it had no discretion to adjust the default weightings prescribed by Minnesota Rule 8100.0300, subpart 5 (2019).

Affirmed in part, reversed in part, and remanded.

Considered and decided by the court without oral argument.

OPINION

MCKEIG, Justice.

This case concerns the valuation of a pipeline system for tax years 2015 and 2016. The tax court increased the assessed unit value of the pipeline system for both years. The taxpayer appeals from the tax court's market value determination, asserting that the tax court erred in its treatment of construction work in progress and external obsolescence in the computation of the cost indicator of value. The taxpayer also appeals the weight that the tax court assigned to the cost indicator of value, as opposed to the income indicator, when it calculated the unit value of the pipeline system. Because the tax court did not err in its calculations for the cost indicator of value, we affirm. But, because the tax court erred by concluding that it had no discretion to adjust the default weightings prescribed by Minnesota Rule 8100.0300, subpart 5 (2019) for the cost and income indicators of value, we remand the case for the tax court to determine whether the circumstances of the unit

valuation dictate the need for adjusted weightings. We therefore affirm in part, reverse in part, and remand for a unit valuation consistent with this opinion.

FACTS

Enbridge Energy, Limited Partnership (Enbridge) owns and operates the Lakehead System, a pipeline system for the transportation of petroleum products. The Lakehead System is the U.S. portion of an operationally integrated pipeline system spanning roughly 2,200 miles from western Canada to the U.S. Great Lakes region and eastern Canada. In Minnesota, the Lakehead System extends 283 miles across portions of 13 counties. Under Minnesota law, pipeline systems are valued according to the unit-rule method. *See generally Comm’r of Revenue v. Enbridge Energy, Ltd. P’ship (Enbridge I)*, 923 N.W.2d 17, 20 (Minn. 2019) (describing the valuation process for pipeline systems); Minn. R. 8100 (2019).

This case concerns the valuation of the Lakehead System for tax years 2015 and 2016; Enbridge’s challenges to each valuation are considered together on appeal. During a 5-day trial before the tax court, the parties offered conflicting expert testimony on the market value of the Lakehead System. The experts’ calculations for some indicators of value and their assigned weightings to the cost and income approaches to valuation are relevant to this appeal and summarized below.

Enbridge’s expert appraiser, Thomas K. Tegarden, prepared appraisals of the unit value of the property in 2015 and 2016 under the cost and income approaches. Tegarden’s calculations for the 2015 cost indicator of value included \$1,107,446,503 for construction work in progress (CWIP). Tegarden recognized that the pipeline property

suffered external obsolescence representing a loss in value of 36.89 percent in 2015 and 43.9 percent in 2016. Because Tegarden determined that the existence of external obsolescence reduced the reliability of the cost approach, Tegarden placed less weight on that approach as compared to the income approach. With 80 percent weight attributed to the income approach and 20 percent weight attributed to the cost approach, Tegarden estimated Enbridge’s pipeline property had a unit value of \$5,300,000,000 in 2015 and \$5,500,000,000 in 2016.

Enbridge’s Expert’s Appraisal (the Tegarden Appraisal)				
	Cost	Income	Weighting	Unit Value
2015	\$5,922,000,000	\$5,146,000,000	20-80	\$5,300,000,000
2016	\$6,040,000,000	\$5,366,000,000	20-80	\$5,500,000,000

The Commissioner’s appraiser, T. Scott Vandervliet, estimated that the property was more valuable than the Commissioner had originally assessed, and nearly twice as valuable as Tegarden’s estimates. Vandervliet’s 2015 cost indicator of value included \$3,682,488,025 for CWIP. Vandervliet determined that no external obsolescence affected the property as of either assessment date, and applied equal weight to the cost and income approaches.

The Commissioner’s Expert’s Appraisal (the Vandervliet Appraisal)				
	Cost	Income	Weighting	Unit Value
2015	\$9,597,600,000	\$9,543,200,000	50-50	\$9,570,400,000
2016	\$10,961,800,000	\$10,609,300,000	50-50	\$10,785,600,000

Ultimately, the tax court determined that the Commissioner had undervalued the property in each year. Because the Commissioner agreed post-trial that Tegarden used the appropriate CWIP balance for 2015, the tax court adopted his figures for CWIP. The tax court rejected Enbridge’s arguments regarding external obsolescence, and weighted the cost and income indicators of value equally.¹

The Tax Court’s Appraisal				
	Cost	Income	Weighting	Unit Value
2015	\$9,372,811,623	\$5,322,912,000	50-50	\$7,347,861,812
2016	\$10,763,859,982	\$5,524,483,000	50-50	\$8,144,171,725

Enbridge appealed, contending that: (1) the tax court (and Enbridge’s own expert) overstated the amount of the construction work in progress; (2) Enbridge is entitled to a reduction in market value to accurately reflect the impact of external obsolescence; and (3) the tax court erred by weighting the cost and income indicators of value equally to determine the unit value of the pipeline system. We address each argument in turn.

¹ Thereafter, the tax court allocated a portion of the unit value for each tax year to Minnesota, and then reduced the allocated Minnesota value by excluding certain property. The resulting allocated value—that is, the portion subject to Minnesota tax—was \$1,628,328,598 for 2015, and \$1,734,981,886 for 2016. *See Cty. of Aitkin v. Blandin Paper Co.*, 883 N.W.2d 803, 812 (Minn. 2016) (explaining the final steps in the reconciliation process with the unit-value method for pipeline property); Minn. R. 8100.0200 (explaining the valuation, allocation, and apportionment process).

ANALYSIS

Our review of the tax court’s decision is limited and deferential. *Minn. Energy Res. Corp. v. Comm’r of Revenue (MERC I)*, 886 N.W.2d 786, 792 (Minn. 2016). We determine only whether the tax court lacked jurisdiction, whether the tax court’s order is supported by the evidence and in conformity with the law, and whether the tax court committed any other error of law. Minn. Stat. § 271.10, subd. 1 (2018); *Medline Indus., Inc. v. Cty. of Hennepin*, 941 N.W.2d 127, 131 (Minn. 2020). “We generally defer to the tax court’s valuation decision in light of the inexact nature of real property appraisal.” *Inland Edinburgh Festival, LLC v. Cty. of Hennepin*, 938 N.W.2d 821, 825 (Minn. 2020). “When the tax court has ‘clearly misvalued the property’ or ‘completely failed to explain its reasoning,’ we accord the tax court no deference.” *Id.* (quoting *Nw. Nat’l Life Ins. Co. v. Cty. of Hennepin*, 572 N.W.2d 51, 52 (Minn. 1997)). We review the tax court’s market value determinations for clear error and its legal determinations de novo. *Lowe’s Home Centers, LLC (Plymouth) v. Cty. of Hennepin*, 938 N.W.2d 48, 53–54 (Minn. 2020).

Minnesota’s property-tax system rests on the principle that all property must be “valued at its market value.” Minn. Stat. § 273.11, subd. 1 (2018). Generally, each item of personal property is separately and independently valued, and property tax is assessed by local taxing authorities. *Enbridge I*, 923 N.W.2d at 20 (citing Minn. Stat. § 273.17, subd. 1 (2018); Minn. Stat. § 273.062 (2018)). To address the unique character of public utility companies, the Minnesota Legislature adopted an alternative method for assessing the value of railroads, utilities, and pipelines operating within the state. *See Cty. of Aitkin v. Blandin Paper Co.*, 883 N.W.2d 803, 811–12 (Minn. 2016); *see generally* Minn.

R. 8100.0200. This method starts by assessing the value of the system plant as a whole (the “unit value”) before dividing the unit value among the states in which the utility company operates. Minn. R. 8100.0200. After making additional adjustments, the Minnesota portion of the unit value is distributed amongst the relevant local taxing districts. *Id.* This appeal focuses on the tax court’s determination of the unit value.

Chapter 8100 prescribes the process for assessing the unit value of utility company property. Minn. R. 8100.0300, subp. 1. Under the default process, an assessor utilizes the cost and income approaches to determine the cost and income indicators of value.² These indicators of value are then weighted to calculate the unit value. Minn. R. 8100.0300, subp. 5. The default weighting of the indicators of value places equal weight on the cost and income indicators (50 percent each). *Id.*

One of the components of the cost indicator of value is construction work in progress (CWIP).³ Minn. R. 8100.0300, subp. 3. CWIP represents “that cost of property that is not in service or has not been placed in a Plant in Service account as of the assessment date.” Brent Eyre, *A Review of MN Rules Chapter 8100 Pertaining to the Valuation &*

² “Additional 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 of a utility.” Minn. R. 8100.0300, subp. 4a.

³ CWIP is captured twice in the valuation of pipeline systems. First, construction work in progress is included under the cost approach before determining the unit valuation. Minn. R. 8100.0300, subp. 3A. Second, qualifying construction work in progress is deducted from the post-allocation unit valuation. Minn. R. 8100.0500, subp. 1. This appeal concerns the treatment of CWIP under the cost approach, not the adjustment made to the Minnesota portion of the unit value under Minn. R. 8100.0500.

Assessment 17 (2005). “Since most cost approaches begin with an analysis of Plant in Service accounts, an addition must be made to the cost approach in order to properly account for the value of CWIP.” *Id.*

Finally, 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.

I.

We start with Enbridge’s claim that the tax court erred in its treatment of CWIP expenses in the calculations made under the cost approach. Enbridge makes three arguments. First, Enbridge argues that the tax court acted outside the scope of its statutory authority by assessing the value of property that was not “attached” to the pipeline system of mains, pipes, and equipment when it determined the unit value of the property. *See* Minn. Stat. § 273.33, subd. 2 (2018) (“The personal property, consisting of the pipeline system of mains, pipes, and equipment *attached thereto*, of pipeline companies and others engaged in the operations or business of transporting products by pipelines, shall be listed with and assessed by the commissioner of revenue” (emphasis added)). Second, Enbridge argues that the tax court erroneously included CWIP expenses for items that were not “installed by the assessment date.” *See* Minn. R. 8100.0300, subp. 3A. Third, Enbridge asserts that because the tax court should only consider the value of the expansionary CWIP under the cost approach, it erred by not categorizing the CWIP that it

included so as to exclude non-expansory CWIP. For the following reasons, we conclude that the tax court did not err in its treatment of CWIP.

A.

Enbridge argues that the tax court acted outside the scope of its statutory authority by assessing the value of property, such as land, that cannot be “attached” to the pipeline system when it determined the unit value. Specifically, Enbridge argues that the Commissioner’s authority to tax the Lakehead System derives from Minn. Stat. § 273.33, which pertains to personal property exclusively; thus, Enbridge asserts, including expenses for land purchases and easements at any point in the valuation process is improper.

We considered whether certain non-formula-assessed and tax-exempt property could be included in the determination of a property’s unit-value in *MERC I*.⁴ See 886 N.W.2d at 801. The valuation of a pipeline begins by establishing an estimate of the value of the entire system plant of a utility company taken as a whole “without any regard to the value of its component parts.” See Minn. R. 8100.0100, subp. 16; see also Minn. R. 8100.0200. The “system plant” means “the total tangible property, *real and personal*, of a company which is used in its utility operations in all states in which it operates.” Minn. R. 8100.0100, subp. 14 (emphasis added). Land is not taxed according to the formula provided for the valuation of a utility property. *MERC I*, 886 N.W.2d at 800; Minn. R. 8100.0500, subp. 2. Nonetheless, real property is included in the unit value of

⁴ “Non-formula-assessed property” means “property of a utility which is valued by the local or county assessor rather than by the commissioner of revenue.” Minn. R. 8100.0100, subp. 10. Land, nonoperating property, and rights-of-way are examples of non-formula-assessed property. Minn. R. 8100.0500, subp. 2.

the “entire system plant.” Thus, the plain language of the rules contemplates that a property’s unit value will include the value of certain tax-exempt and non-formula-assessed property, such as land.

As we explained in *MERC I*, the plain language of the rules states that the value of certain non-formula-assessed and tax-exempt property is deducted from the Minnesota portion of the market value “at the final stage.” 886 N.W.2d at 800–01; *see also* Minn. R. 8100.0500, subp. 3 (specifically instructing the tax court to deduct the value of land and rights-of-way from the Minnesota portion of the unit value). This practice is consistent with the statutory distinction between estimated market value and taxable market value.⁵ We conclude that certain non-formula-assessed and tax-exempt property may be included in determining the unit value of a pipeline system so long as it is ultimately deducted when determining the taxable market value.⁶ The tax court did not exceed its statutory authority under Minn. Stat. § 273.33, subd. 2 by including non-formula-assessed and tax-exempt property in its determination of the property’s unit value.

⁵ “Estimated market value” means “the assessor’s determination of market value.” Minn. Stat. § 272.03, subd. 14 (2018). “Taxable market value” is the estimated market value “reduced by market value exclusions, deferments of value, or other adjustments required by law, that reduce market value before the application of classification rates.” Minn. Stat. § 272.03, subd. 15 (2018).

⁶ Enbridge does not challenge the deductions made by the tax court under Minn. R. 8100.0500.

B.

Enbridge argues that the tax court erroneously included CWIP expenses for items that were not installed by the assessment date, including expenses for items that, by their nature, cannot be “installed” to a pipeline system. The crux of Enbridge’s argument is that indirect construction expenses must be excluded from the cost indicator of value. The rule for calculating the cost indicator of value provides:

The cost factor to be considered in the utility valuation formula is the original cost less depreciation of the system plant, plus the cost of improvements to the system plant, plus the original cost of all types of construction work in progress that are installed by the assessment date, plus the cost of property held for future use, plus the cost of contributions in aid of construction. Original cost less depreciation is presumed to be equal to historical cost less depreciation. For rate-regulated companies, the commissioner must use the same type of cost that is used in the rate base calculation.

Minn. R. 8100.0300, subp. 3A.

As the Appraisal Institute explains, “[t]o develop cost estimates for the total building, appraisers must consider direct costs (also known as hard costs) and indirect costs (also known as soft costs). Appraisal Inst., *The Appraisal of Real Estate* 571 (14th ed. 2013) (emphasis omitted). “Both direct and indirect costs are *essential* to a reliable cost estimate.”⁷ *Id.* (emphasis added). The theory underlying the cost approach is to capture the expenses a third party would pay to construct a duplicate property. Enbridge’s

⁷ “Direct construction costs include the costs of material and labor as well as the contractor’s profit required to construct the improvement on the effective appraisal date. . . . Indirect costs are expenditures or allowances that are necessary for construction but are not typically part of the construction contract.” *The Appraisal of Real Estate*, *supra*, at 571.

arguments as to why a third party would not share the indirect expenses of construction are unavailing.

Because the Federal Energy Regulatory Commission (FERC) regulates pipeline companies, we find federal regulations particularly instructive. Under federal regulations, the costs chargeable to a pipeline company's CWIP account shall "include direct and other costs," such as: the cost of labor, including the traveling and incidental expenses of employees; the cost of material and supplies used; and the cost of maintaining and operating vehicles that are used in construction work. *See* 18 C.F.R. pt. 352, § 3-3 (2018). With this regulation in mind, we find Enbridge's argument that the tax court must exclude indirect expenses for construction projects unpersuasive. Under general appraisal practices and industry standards for pipeline company accounting, CWIP expenses include the direct and indirect costs of construction.

Enbridge is correct that the indirect costs of construction are not taxable under chapter 8100. As explained above, it is not incongruous for the estimated market value to exceed the taxable market value. Here, the rule provides for "qualifying property" to be deducted from the Minnesota portion of the unit value. Minn. R. 8100.0500. "Qualifying construction work in progress" is defined as "the cost of materials and associated charges which are not yet placed in a permanent site." Minn. R. 8100.0100, subp. 13. Thus, the rule provides a mechanism for excluding construction expenses that are not taxable under chapter 8100, and explains that the taxpayer bears the burden of proof to establish the value of any property that should be excluded. Minn. R. 8100.0500,

subp. 5. We therefore conclude that the tax court's treatment of direct and indirect construction expenses was not erroneous as a matter of law.

Finally, whether construction work in progress was installed by the assessment date presents a question of fact. We review the tax court's factual findings for clear error, with deference to the tax court's credibility determinations. *LumiData, Inc. v. Comm'r of Revenue*, 853 N.W.2d 142, 146 (Minn. 2014).

Here, the tax court was presented with two expert reports, expert testimony, and Enbridge's arguments regarding the appropriate figures for CWIP under the cost approach and the installation issue. In its post-trial brief, the Commissioner conceded that Tegarden used the appropriate figures for CWIP under the cost approach. Enbridge, however, continued to assert that its own expert was mistaken.

Enbridge argued that the evidence of "in-service" dates it offered were synonymous with when projects were "installed." Enbridge conceded, however, that the "in-service" dates could relate to an entire project and might not capture when *portions* of that project were "installed." Accordingly, the tax court found Enbridge's argument unpersuasive. Ultimately, the tax court determined that Enbridge did not carry its burden to show that expenditures listed in its CWIP accounts reflected the cost of items that were not installed as of the valuation dates. Our review of the record reveals that the tax court's finding was not clearly erroneous.

C.

Enbridge argues that only a certain type of construction expenses—specifically, expansionary CWIP—should be included under the cost approach. The tax court found Enbridge’s argument about expansionary and non-expansionary CWIP unavailing. We agree. The text of Rule 8100.0300 requires the inclusion of “*all types* of construction work in progress that are installed by the assessment date.” Rule 8100.0300, subp. 3A (emphasis added). Excluding certain types of CWIP would contravene the unambiguous language of the rule. *See* Minn. Stat. § 645.16 (2018) (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded . . .”). The tax court’s inclusion of all types of CWIP under the cost approach was not an error.

II.

We next address whether the tax court erred in its calculation of external obsolescence. External obsolescence is “the measurement of a property’s loss in value as a result of factors beyond the physical boundaries of the property and beyond the owner’s control.” *Menard, Inc. v. Cty. of Clay*, 886 N.W.2d 804, 816 (Minn. 2016) (citation omitted) (internal quotation marks omitted). After a taxpayer presents a prima facie case demonstrating that the property’s value has been impacted by external obsolescence, the taxpayer retains the burden of proving, by a preponderance of the evidence, the amount of that external obsolescence. *See Minn. Energy Res. Corp. v. Comm’r of Revenue (MERC II)*, 909 N.W.2d 569, 573 (Minn. 2018).

A.

Enbridge argues that, because it allegedly suffered from industry-wide obsolescence, the tax court erred as a matter of law by requiring proof that Enbridge's property was more adversely affected than other comparable properties. Whether the tax court misapplied the law is a question we review de novo.

The tax court issued two orders relevant to the external-obsolescence issue in this appeal: its Findings of Fact, Conclusions of Law, and Order for Judgment, on June 25, 2019, and an Order on Motion for Rehearing, on November 5, 2019. *See Enbridge Energy, Ltd. P'ship v. Comm'r of Revenue*, No. 8858-R, 2019 WL 2853133 (Minn. T.C. June 25, 2019) (*June Order*), *reh'g denied*, No. 8858-R, 2019 WL 5995805 (Minn. T.C. Nov. 5, 2019) (*November Order*). In its June Order, the tax court explained:

“Direct comparison of similar properties with and without external obsolescence can be the most persuasive measurement of the effect of negative externalities on value,” but only “when enough data is available for that sort of analysis.” If the asserted cause of obsolescence affects properties nationwide, or affects an entire industry, however, it will be difficult (if not impossible) to find properties *without* obsolescence against which to make a comparison. . . . In that case, an alternative approach is the capitalization of “income lost to the effect of the externality.” Under this approach, the market is first analyzed “to quantify the income loss.” The income loss is then capitalized to determine directly the decrease in property value resulting from the externality.

June Order, 2019 WL 2853133, at *16 (quoting *The Appraisal of Real Estate, supra*, 634–35). The tax court's June Order accurately described external obsolescence and the methods for its calculation. *See, e.g., Guardian Energy, LLC v. Cty. of Waseca*, 868 N.W.2d 253, 267 (Minn. 2015) (“[T]he capitalization of the income loss attributable

to the negative market influences is a generally respected approach to calculating external obsolescence.”).

In its November Order, however, the tax court explained, “[s]ome of the causes to which EELP attributed obsolescence are the result of nationwide or industrywide factors that EELP must show affected its pipeline to a greater extent than other pipelines.” *November Order*, 2019 WL 5995805, at *8. Enbridge argues this is a misstatement of law. We agree.

The tax court appears to have confused the method of proof required under the direct comparison method with method of proof for industry-wide obsolescence. Under the capitalization of income approach, a taxpayer does not need to show that its property was affected to a greater degree than a comparator property. To the extent that the tax court confused the two approaches for calculating external obsolescence in its November Order, the tax court erred.

B.

We next consider whether the tax court’s misstatement of law was harmless error. *See Nw. Nat. Life Ins. Co.*, 572 N.W.2d at 55. Ultimately, the tax court rejected Enbridge’s claim of obsolescence because the methodology that Tegarden used was unreliable and his findings were not credible. “[W]e afford the tax court ‘broad discretion’ to rely upon or disregard the evidence presented at trial.” *Medline Indus., Inc.*, 941 N.W.2d at 133 (quoting *Menard, Inc.*, 886 N.W.2d at 813). The tax court’s decision on how to weigh the evidence presented must be sustained unless it is clearly erroneous. *Id.* at 132.

The tax court undertook a detailed evaluation of the credibility, reliability, and relevance of the evidence offered by Enbridge in support of its external obsolescence claim, considering each of Enbridge's arguments. Specifically, the tax court explained in detail why it found Tegarden's methodology, and most of Enbridge's evidence, unreliable. Although the tax court discussed each of Enbridge's arguments individually, the record reflects that its determination was based on the evidence as a whole.

First, the tax court explained that Tegarden used an approach that is traditionally limited to utility companies that are regulated on a cost-of-service basis. Because Enbridge is not regulated in this way, and its earnings are not restricted to a specific rate of return, the tax court rejected Tegarden's method for calculating Enbridge's expected rate of return. Because Enbridge was not precluded from exceeding the rates set by FERC—and did so through incremental surcharges—the tax court determined that Tegarden's methodology was based on a false premise. Although the tax court erred by expecting proof that governmental regulations affected Enbridge more than others, its underlying finding that governmental regulations did not adversely affect Enbridge was not clearly erroneous.

Second, the tax court questioned the reliability of Tegarden's reported figures for average rates of return. Tegarden relied on net operating income figures that he received from Enbridge. The evidence presented did not explain how Enbridge treated the insurance recoveries associated with oil spills in 2010, lending uncertainty to the reliability of figures Tegarden received. Given this uncertainty, the tax court concluded that the evidence presented did not necessarily support Enbridge's characterization of its returns as "declining." The tax court also questioned the reliability of the figures suggesting that

Enbridge had failed to earn revenues sufficient to cover its cost of service. Enbridge reports its rate of return for federal regulatory purposes “entirely differently” than the returns it reported to its expert in preparation for trial. The reporting discrepancies are the result of a “line swap” between Enbridge and a separate company under common ownership that occurred in the late 2000s. Although Enbridge does not own the line it “swapped” with its sister company, Enbridge continues to report its actual and hypothetical rates of return to FERC by including depreciation on a line it does not own, and excluding depreciation of the line it acquired in the “swap.” Because the tax court’s concerns regarding the reliability of Tegarden’s figures are supported by the record, it was not clearly erroneous for the tax court to give this evidence less weight.

The tax court also questioned how some of Tegarden’s sources of obsolescence affected Enbridge’s market value. For example, Tegarden included the drop in oil prices and increased competition in his analysis. Because Enbridge does not own the oil its pipeline transports, the tax court found the depressed price of oil was not a credible cause of external obsolescence. The tax court was also unpersuaded by increased competition, given that some competitors cited were hypothetical—such as Keystone XL—not competitors that were operational as of the assessment dates. Additionally, railway competitors were more costly, and were not deemed a credible threat to Enbridge’s more affordable means for transporting oil. The record further indicated that Enbridge could not meet the existing demand for transporting oil, undercutting both hypotheses that the drop in oil prices negatively affected demand and that competitors were interfering with Enbridge’s business.

Finally, the tax court found that Enbridge's primary fact witness was credible, but that his testimony undermined Enbridge's claim for obsolescence. Enbridge's fact witness testified that its financial performance in 2014 "was very solid," and its financial performance in both 2014 and 2015 was "inside a reasonable range" of the revenues required to cover its costs. The witness further testified that despite the growing hostility toward hydrocarbons (a cause of obsolescence advanced by Enbridge, but not its expert), the economy remained "dependent" on hydrocarbons and would be "for some period of time to come," anticipating that Enbridge's property would continue to be in service "50 years from now, 100 years from now possibly."

After considering all of the evidence, the tax court found that Enbridge failed to meet its burden to show that the property's value was affected by obsolescence as of either assessment date. Our review of the record reveals that the tax court's reasoning regarding the credibility and reliability of the methodology Tegarden used to calculate industry-wide obsolescence and the tax court's decision to give little weight to much of Enbridge's evidence were not clearly erroneous. We conclude that the tax court's decision is justified by the evidence and in conformity with law. *MERC II*, 909 N.W.2d at 574. Because the foregoing reasons serve as independent grounds for rejecting Enbridge's claim of external obsolescence, the tax court's misstatement of law was harmless error. We affirm the tax court's decision on the issue of external obsolescence.

III.

Our final task is to determine 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. We have said that the weight to be assigned to the approaches used to value property “depends on the reliability of the data and the nature of the property being valued,” *Harold Chevrolet, Inc. v. Cty. of Hennepin*, 526 N.W.2d 54, 59 (Minn. 1995), and the weight assigned to each approach depends on the facts of the particular case, *Cont’l Retail LLC v. Cty. of Hennepin*, 801 N.W.2d 395, 402 (Minn. 2011). Valuation of utility property follows a slightly different model for valuation, including by establishing default weightings for the cost and income approaches, *see* Minn. R. 8100.0300, subp. 5. But even in this setting, the “facts of each case,” *Cont’l Retail LLC*, 801 N.W.2d at 402, and the tax court’s discretion, remain relevant. The weight assigned to the indicators of value is reviewed for an abuse of discretion. *See Medline Indus., Inc.*, 941 N.W.2d at 133.

Relying on our holding in *Enbridge I*, 923 N.W.2d at 18–19, the tax court concluded that it was “constrained in this case by Minn. R. 8100.0300, subp. 5,” which it said “dictates a default weighting of 50 percent to the cost approach and 50 percent to the income approach.” The tax court further stated that “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 . . . regardless of the age of the assets being valued.”

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.

The tax court’s misunderstanding of *Enbridge I* clearly affected its decision to assign equal weight to the cost and income indicators of value. We therefore reverse this portion of the tax court’s decision and remand the case 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. We express no opinion on whether the valuation circumstances dictate an alternative weighting for the cost and income indicators of value. If the tax court concludes that the circumstances so dictate, it must “fully explain its reasoning.” *See Enbridge I*, 923 N.W.2d at 22 (citation omitted).

CONCLUSION

For the foregoing reasons, we affirm in part, reverse in part, and remand to the tax court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.