BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203	**Docket No.: 76015**
Petitioner: **UTAH GAS CORPORATION,** v. Respondent: **RIO BLANCO COUNTY BOARD OF EQUALIZATION.**	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals ("Board") on September 16th and 17th, 2020, Gregg Near, Samuel M. Forsyth, and Diane M. Devries presiding. Petitioner was represented by Arthur A. Hundhausen, Esq. and Jonathan S. Bender, Esq. Respondent was represented by Todd M. Starr, Esq. Petitioner appeals the actual value of the subject property for tax year 2019.

EXHIBITS AND WITNESSES

The Board admitted into evidence Petitioner's Exhibits 1, 2, 4, 5, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, and 22 and Respondent's Exhibits A, B, C, D, E, F, G, L, M, N, O, P, Q, and R. The Board also accepted written stipulations, written opening statements, and written closing arguments from the parties.

The testimony of Petitioner's witness Joseph J. Calvanico, CEA, FRICS, MAI was admitted as expert testimony. The testimony of Respondent's witness Robert T. Lehn, a Registered Professional Appraiser in the State of Texas, was admitted as expert testimony.

DESCRIPTION OF THE SUBJECT PROPERTY

Account Nos.	Asset Description
P1202821	Approx. 6.4 Miles of Steel Pipe
P7503900	Compressors, Tanks (Gas Plant)
P7503901	Gas Plant Pipe (Compressor Station)
P7503902	Approx. 382 Miles Steel Pipe and 39 Miles of Poly Pipe - Varying Diameters (Gathering System)

VALUES ASSIGNED BY CBOE

Account Nos.	CBOE Value
P1202821	$46,710
P7503900	$8,033,470
P7503901	$451,370
P7503902	$23,599,890
	$32,131,440

The subject property consists of personal property assets associated with the natural gas gathering and processing system known as Dragon Trail. The majority of assets of the Dragon Trail system lie in Rio Blanco County, but the Dragon Trail system also extends into the Colorado counties of Garfield and Mesa to the south and the Utah counties of Grand and Uintah to the west. The Dragon Trail system in total comprises 579 natural gas wells, a gathering system of approximately 489 miles of pipeline, a compressor station and a gas plant. The subject assets comprise a gathering system, a compressor station, and a gas plant, and pipeline, all located in Rio Blanco County. Importantly, the subject assets do not include the wells or related production. The subject assets' total actual value, as asserted by Respondent the County Board of Equalization ("CBOE") and by Petitioner Utah Gas Corporation, are:

Respondent:

Value by Income Approach	Not Developed
Value by Sales Comparison Approach	Not Developed
Value by Cost Approach	$32,131,440

Petitioner:

Value by Income Approach	Not Developed
Value by Sales Comparison Approach	$4,000,000
Value by Cost Approach	$9,700,000
Reconciled Value	$6,500,000

BURDEN OF PROOF AND STANDARD OF REVIEW

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the assessor's or County Board of Equalization's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm'n*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters

solely within the fact-finding province of this Board, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993). The determination of the degree of comparability of land sales and the weight to be given to the various physical characteristics of the property are questions of fact for the Board to decide. *Golden Gate Dev. Co. v. Gilpin Cty. Bd. of Equalization*, 856 P.2d 72, 73 (Colo. App. 1993).

The Board reviews every case de novo. *See Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, the de novo proceeding before the Board "is commonly understood as a new trial of an entire controversy." *Sampson*, 105 P.3d at 203. Thus, any evidence that was presented or could have been presented in the county board of equalization (CBOE) proceeding may be presented to this Board for a new and separate determination. *Id*. However, the Board may not impose a valuation on the property in excess of that set by the CBOE. § 39-8-108(5)(a), C.R.S.

APPLICABLE LAW AND AUTHORITATIVE SOURCES

Under the Constitution of the State of Colorado and Colorado statute, the valuation of personal property for property tax purposes must be determined by "appropriate consideration" of the three appraisal approaches as are applicable to the appraisal of the property, that is, the cost approach, the market approach, and the income approach.[1] Colo. Const., Art. X, Sec. 3; §§ 39-1-103(5)(a), (8), (11), (13-18), 39-1-104(12.3)(a)(I); *See Home Depot USA, Inc. v. Pueblo Cty. Bd. of Comm'rs*, 50 P.3d 916, 919 (Colo. App. 2002).

The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S., which states:

> Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes.

The cost approach involves estimating the cost of replacing the improvements to the property, less accrued depreciation. *Bd. of Assessment Appeals v. E.E. Sonnenberg & Sons, Inc.,* 797 P.2d 27 (Colo. 1990). Colorado law mandates that depreciation in the valuation of a taxpayer's personal business property be allowed annually from the base year to the date of assessment. *BQP Industries v. State Bd. of Equalization*, 694 P.2d 337 (Colo. App. 1984).

County assessors are required to follow the guidance of the Property Tax Administrator laid out in the Assessors' Reference Library ("ARL"). *Huddleston v. Grand Cty. Bd. of Equalization*, 913 P.2d 15, 17-18 (Colo. 1996). The ARL contains detailed procedures for the *ad*

[1] Both Petitioner's appraiser and Respondent's appraiser appropriately considered, but did not develop, an income approach to value.

valorem valuation of pipeline such as the subject property. 5 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 7, at 7.6 - 7.28, (rev. Jan. 2021).

ISSUES AND ARGUMENT

A. Petitioner

Petitioner called as its first witness Russell Knight. Mr. Knight is the President of Utah Gas. Mr. Knight testified regarding the general business model of Utah Gas. He also testified to his lay opinion that Petitioner's 2017 purchase of the Dragon Trail system from Encanca at $4,000,000 was a market-based, arm's-length transaction that he believed reflected the market value of the assets purchased. Mr. Knight confirmed that the wells associated with the purchase are not a part of the assets appealed in this docket. Mr. Knight characterized the well assets as at or near the end of their economic life, in terms of their productivity and profitability. Mr. Knight stated that there are two "trains" which are designed to deliver product to the processing plant. Train 1 has a 45,000 MCF (thousand cubic feet) daily capacity, Train 2 has a 15,000 MCF daily capacity. Train 2 is "mothballed" because it has diminished liquid capacity production. It was mothballed prior to Utah Gas's purchase of Dragon Trail from Encana in 2017. As of the assessment date, Train 1 produced 10,000 MCF per day. The minimum processing to break even is a processing rate of 25,000 MCF per day. The balance of production in order to meet break-even status was made up partly by purchases of product from several 3rd party gathering customers (totaling approximate purchase amounts of 9,000 MCF) and residue gas from Questar pipeline which averaged approximately 6,700 MCF per day. Mr. Knight testified that 30% of the pipe in the processing plant was 6" or larger in diameter. He stated this was an estimate and that the exact figure could not be exactly determined without a great amount of time and expense. Mr. Knight testified that on January 1, 2019 (the assessment date), the market price for natural gas was low.

Petitioner next called Aaron Martinson, CEO of Utah Gas. Mr. Martinson testified that he "led the transaction effort" for Utah Gas' 2017 $4,000,000 purchase transaction of the Dragon Trail system from Encana. He testified to his lay opinion that all of the criteria that determine whether a transaction is market based and arm's-length were satisfied. He opined that the transaction met the criteria found in the Appraisal Institute's and ARL's definition of market value.

The Petitioner also provided a signed, notarized affidavit by Mark Thrush, advisor in the US business development group for Encana Oil and Gas, seller (Exhibit 8). Mr. Martinson testified that the sale transaction between the parties was an arm's-length transaction.

A condition of the 2017 transaction was the requirement that the purchaser establish a performance bond (the Fund) to ensure that Utah Gas plugs and abandons wells when that becomes necessary. Mr. Martinson stated that though the transaction could not be finalized without the establishment of the Fund, that this Fund is carried on the Utah Gas books as an "asset," not a "liability," that it is in effect Utah Gas' money, and finally that the Fund is associated with wells that are part of the purchased assets whose values are not under appeal. For these reasons, Mr. Martinson stated, the Fund is not considered by the Petitioner to be part of the

purchase price of $4,000,000, nor should it be considered part of the consideration of the purchase price of the system's assets.

Mr. Martinson was asked if Respondent requested the financials on the assets that the Assessors' Reference Library recommends. He responded that the request was made but not satisfied for two primary reasons. First, as of the assessment date, Utah Gas possessed only one year of financials, which is the amount of time Utah Gas was in full operation. Second, Mr. Martinson also testified that the financials were for the entire system, rather than just the subject assets, and segregating income and expenses to reflect just the assets appealed would not be possible. In response to Board questions, Mr. Martinson said that pro forma income statements provide some guidance as to whether an asset has value and how much that value is. He declined Respondent's requests to provide the pro forma income statements either created by the seller, Encana, or the pro forma financials he testified were created by Utah Gas. Mr. Martinson testified that another tool helpful in establishing value from his perspective as a market participant and CEO is to determine a multiple of the Expenses Before Interest, Taxes, Depreciation, and Amortization (EBITDA). Having received this information in the due diligence aspect of the transaction, Utah Gas determined an offer for purchase based on an EBITDA of 1 which was ultimately accepted. Mr. Martinson stated that the seller did not establish an asking price for the assets during the offering, negotiating, and closing period. Mr. Martin testified that the value of the wells are not part of this appeal.

Petitioner called Joseph J. Calvanico as an expert witness on the subject of the property's valuation. Mr. Calvanico's testimony was supported by an Appraisal Report he authored. The appraisal was admitted as Exhibit 17. Mr. Calvanico testified that he considered the three approaches to value. He did not develop a value opinion based on the income approach, stating that there was insufficient income data to do so. The ARL states that in order to establish a value under the income approach three years of income should be analyzed. Mr. Calvanico testified that three years of income were not available for his analysis, as Utah Gas had only owned and operated the assets for one year during the data collection period.

Mr. Calvanico developed a value conclusion in his appraisal under what he termed a market approach, relying solely on the 2017 sale transaction between Encana and Utah Gas, within which the subject assets were sold. He interviewed the representatives of the buyer and seller and concluded that the $4,000,000 sale satisfied the components of the definition of an arm's-length transaction. He stated that it is a well-established tenet in appraisal literature and classes that the confirmed, arm's-length sale of the subject property is compelling evidence as to its value. Mr. Calvanico believed that the purchase transaction of all of the Encana's Dragon Trail/ Douglas Creek Assets for $4,000,000 represented the market value of the subject assets (although he also insinuated they could be worth less under his cost approach). Having determined that the 2017 sale was an arm's-length transaction, he "Placed a great deal of weight on the market data approach as influenced by the Cost Approach." (Exhibit 17, page 31 of 48.)

In the development of the sales comparison (market) approach Mr. Calvanico references the sale on three different pages in his Appraisal Report, quoted in total as follows:

> On January 12, 2017, SWEVCO-SABW, LLC (now known as Utah Gas Corp) purchased all of Encana's Dragon Trail/ Douglas Creek Assets for $4,000,000. The assets contained the Dragon Trail Gathering System, the Dragon Trail Gas Plant, the compressor stations directly related to the Dragon Trail Plant, and approximately 600 wells. The appraisal does not include or address the actual value of these wells. We believe the purchase price underscored our calculations of physical deterioration and functional/economic obsolescence and that the transaction had all the characteristics requisite to an arm's-length transaction. In other words, it is our opinion that the transaction represented Market Value for the subject assets.

Exhibit 17, page 11 of 48.

> We considered and relied upon the market data approach to the valuation of the Subject Property. The Subject Property itself transacted in 2017 for a purchase price of $4,000,000 in an arms-length transaction which included 600 wells which are not included in the scope of work of the appraisal. The subject assets were listed by the prior owner on the open market in 2016. The prior owner evaluated offers from two other prospective buyers. This provides significant insight of the market value of the subject property.
>
> An additional sale in December of 2017 was an acquisition in Louisiana by Perdido. The property transacted at $4 million dollars and similar to the subject included 106 well and 23.88 miles of pipelines.

Exhibit 17, page 21 of 48.

> The market approach to valuation relies on both the system's purchase price in 2017 which is deemed to be an arm's-length transaction as well as an additional system transaction of similar type. The system was marketed during 2016 with three interested parties indicating an open market for the assets. These transactions illustrate and underscore the down market of this industry. The market approach is a clear indication of value for the subject assets.
>
> After careful consideration of the facts and data which influence the value of the Subject Property. We placed a great deal of weight on the market data approach as influenced by the Cost Approach.

Exhibit 17, p. 31 of 48.

Mr. Calvanico also developed the replacement cost new less depreciation approach as another indicator of value. For step one of the cost approach, he relied on cost tables from Marshall Valuation Services as of the assessment date of January 1, 2019 to determine the replacement cost new of the pipeline assets. For the Machinery and Equipment, he conducted a cost study of the equipment for the Petitioner in January 2018. He then provided a replacement cost new factor of 1.06 to bring the cost forward to the assessment date. Mr. Calvanico

referenced the Assessors' Reference Tables, market publications, comparable sales in his files and his own experience in determining that there was physical, economic and functional depreciation that should be applied to the replacement cost new of the assets. As to physical depreciation, Mr. Calvanico noted that the subject property components lie in the asset life tables of 14 and 22 years. Almost all of the assets exceed 14 and 22 years of actual age. Relying on the salvage value indicated from Marshall and Swift, Mr. Calvanico applied a Percent Good factor of 7% to the majority of assets that exceed the age/life tables.

Additionally, Mr. Calvanico identified economic and functional obsolescence based on the fact that the subject property operates at lower and less usable tolerances than when originally placed into service. Mr. Calvanico relied on the ARL for the method of quantifying loss of productivity. (Exhibit 19, p. 10 of 23.) From the Utah Gas engineers, Mr. Calvanico determined that the utilized capacity of the plant is 26,000 MCF/day and the maximum capacity of the plant is 60,000 MCF/ day. The formula to determine the loss of utility factor is [(1+(*Utilized Capacity/Total Capacity*^1)/2)/2]. The calculated factor determining economic and functional obsolescence was 17.09 rounded to 17%. Mr. Calvanico applied the 7% physical depreciation floor rate to all but the newer assets, and the 17% functional obsolescence rate to the Replacement Cost New Less Depreciation ("RCNLD") of all of the assets. Replacement Cost New less all forms of depreciation (physical, economic and function) of the pipe assets, as of January 1, 2019, was $6,572,105. The Replacement Cost New less all forms of depreciation (physical, economic and function) of the machinery and equipment assets, as of January 1, 2019, was $3,126,924. The total value based on the cost approach of the RCNLD of the assets was $9,700,000 (rounded).

Mr. Calvanico's reconciled value based on the market approach to value ($4,000,000) and the RCNLD approach to value ($9,700,000) was $6,500,000.

B. Respondent

Respondent called Robert T. Lehn as its expert witness. Mr. Lehn presented an Industrial and Utility Appraisal of the subject assets. This appraisal developed a conclusion of value based solely on the replacement cost new less depreciation approach. Like Mr. Calvanico, Mr. Lehn considered the income approach but did not develop a conclusion of value based on this approach. He testified that despite numerous requests for income data from the Petitioner, the Petitioner refused to provide income data on the subject assets. He believed that with the income information requested but not provided he could have developed a credible value based on the income approach.

In developing the cost approach for the pipelines, Rio Blanco County ID's P120281 and P7503902, Mr. Lehn relied partly on costs derived from Marshall Valuation Services, partly on nearby values set by nearby counties, and primarily on costs researched and confirmed from the database established over a long period of time and data collected by his company, Thomas Y. Pickett. Mr. Lehn applied a fully depreciated physical depreciation factor of 15% for the pipeline assets that were at the end of their life as based on the age/life tables from the Assessors' Reference Library. His support for this was the Assessors' Reference Library and his experience.

Mr. Lehn then applied a 25% to 70% "Miscellaneous Factor" on each line item of pipe cost to account for a combination of both physical and functional obsolescence.

For the machinery and equipment, Rio Blanco County ID's P7503900 and P7503901, Mr. Lehn's appraisal established the original cost then trended the original cost to the assessment date to establish the reproduction cost new (RCN). After determining the age of the assets and utilizing the age/life tables, Mr. Lehn applied a 15% good floor depreciation factor to almost all of the assets (the exceptions being newer machinery and equipment).

Similar to the pipelines, Mr. Lehn determined that a factor for economic and functional obsolescence was appropriate. In addition to the physical depreciation factor, Mr. Lehn applied a miscellaneous factor to the costs. These factors were 0% for the newest assets, and 35%, 64%, and 70% depending on age.

Mr. Lehn did not apply the ARL's Special Procedures for Newly Acquired Used Pipeline Personal Property in his valuation. He referenced the ARL's directions and depreciation tables, but created his own replacement cost new pipeline schedule specific to the subject assets, to Rio Blanco County, and to the tax year at issue. He rejected Mr. Calvanico's characterization of the subject assets as "scrap" and Mr. Calvanico's selection of a 7% good floor based on a "scrap" designation.

Mr. Lehn stated in testimony (although not in his appraisal exhibit) that the market approach to value was considered but not developed. He stated that there were no sales in the market that could be analyzed that would yield a credible conclusion of value. Mr. Lehn testified that he did not develop a sales comparison approach because properties like the subject assets are uniquely placed properties, the sales of which are impacted by many agreements and the inclusion of intangible (therefore un-taxable) assets, and that each property is unique. In addition, Mr. Lehn noted, the information available to him from the sale agreements is notably sparse. As a result, he testified, it would be rare to find a sale that that would qualify as a comparable sale. He was aware of the 2017 $4,000,000 Dragon Trail system acquisition transaction between Encana and the Petitioner, but did not believe that it represented market value of the subject assets. Mr. Lehn testified that he had interviewed the representatives of the buyer (the Petitioner) in the transaction. He concluded that the transaction did not represent nor provide credible evidence of the market value of the assets here appealed. He disagreed with Mr. Calvanico's statement that the 2017 sale was sufficient to set the market. He said perhaps it could have been used as an acquisition cost in the cost approach, but testified to his opinion that that is not how Mr. Calvanico used it.

The Respondent requested that the Board sustain the following values:

Account Nos.	CBOE Value
P1202821	$46,710
P7503900	$8,033,470
P7503901	$451,370
P7503902	$23,599,890
	$32,131,440

Under cross-examination, Mr. Lehn conceded to certain errors he had made in calculating the value of the subject assets, specifically the depreciated value of the pipelines and the inclusion of the value of an additional engine compressor.

FINDINGS AND CONCLUSIONS

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm'n*, 302 P.3d 241, 246 (Colo. 2013).

The Board considered but was not persuaded by the evidence presented in support of the market approach valuation presented by Mr. Calvanico. Mr. Calvanico's appraisal and testimony raised several areas of concern for the Board. The Board finds it highly unusual that Mr. Calvanico did not physically visit the above ground plant to inspect the subject assets. In his testimony and appraisal, Mr. Calvanico was unclear, and at times contradictory, as to how much weight he placed on the sole data point value conclusion in his purported market approach – the sale of the Dragon Trail system between Encana, seller, and Utah Gas, purchaser, that closed in January 2017 for the consideration of $4,000,000. In addition, it was uncontested that the 2017 sale was not a sale of the same property here under appeal. The sale included other property, located in other counties. Because the property that sold in the 2017 transaction was not the subject property, the Board finds its sale price is not persuasive as an indicator of the subject's market value. The Board considered the valuation evidence presented in support of the Petitioner's cost approach, but was not persuaded by Petitioner's presentation of evidence that the value assigned by the County was incorrect. In general, the Board found Mr. Lehn's valuation persuasive, except to the extent Mr. Lehn conceded on cross-examination to certain errors and a resulting lower valuation.

A. Absence of an Income Approach

Mr. Calvanico did not develop a value based on the income approach, even though he would – or at least should – have had direct access to the information necessary to do so. The Board concurs with ARL guidelines that the analysis of 3 years' worth of income data is preferable. However, the Board is not convinced that in this case an income approach could not be developed, given that Mr. Calvanico had direct access to the Petitioner's records, that Mr. Martinson based the purchase of the assets in part on the EBITDA provided by seller (which was available to Mr. Calvanico), that Mr. Martinson stated in testimony that in one transaction that he determined a purchase price based on only 1 month of income information, that 1 year of income information was typical, and there were as many as two years from the time of negotiation to the assessment date of income data likely available and at least 22 months of income data available from the date of purchased of the assets and ownership by the Petitioner. The Board finds though that enough income information was likely available to Mr. Calvanico to develop an income approach (and that if not, Petitioner should have made it available). Even if given little weight, an income approach conclusion would have helped support the viability of the reported purchase price of the assets across 5 counties and two states as an indicator of value for the subject assets.

The Board also finds Petitioner refused to provide complete income data on the subject assets to Respondent, which likely would have allowed Respondent's appraiser to develop an income approach.

B. Petitioner's Market Approach Value Conclusion

A market approach relies on an appraiser's consideration, comparison, and adjustment to sale prices for dissimilarities, of a "representative **body** of sales," "sufficient to set a **pattern**." § 39-1-103(8)(a)(I), C.R.S. (emphasis supplied). The Board finds that Petitioner did not appropriately develop a market approach to value, and that the value presented as a "market approach" value was not a value developed based on an actual market approach.

As an initial matter, the Board finds that whether the 2017 Dragon Trail sale was an arm's length transaction is only part of a broader and more complex analysis that should have taken place to determine the sale's relevance, if any, in a market approach to valuing the subject assets. Namely, the sale also needed to be proof of the value of the assets – whether that be the asserted $4 million or a figure adjusted for differences between the 2017 sale and the subject assets. The 2017 sale was of assets spanning five counties in two states. If it did show market value, it is not clear what it showed the market value of, and how that relates to the value of the subject assets. The evidence presented did not enable the Board to assess the relevance of the sale price to the subject assets, even assuming the sale was an arm's length sale.

A market approach cannot be developed appropriately from a single, unadjusted sale. Mr. Calvanico himself agreed with the appraisal adage "one sale does not a market make." The Board asked him whether he was unable to find any comparable sales in the permitted five-year data-gathering period. He stated in response that he has valued other systems and has "personal knowledge" of them, and that he has a subscription to an energy database discussing acquisitions within the oil and gas industry, which he insinuated he referred to in the development his sales

comparison value. However, the Board was presented with no actual transactions or reasoning behind actual adjustments of which Mr. Calvanico had "personal knowledge," other than the unadjusted 2017 sale. The Board finds that the 2017 sale – the single sale used in Mr. Calvanico's "market approach" – is insufficient as stand-alone evidence of the market value of the subject assets.

The Board had no evidence that Mr. Calvanico considered whether adjustments to the 2017 sale price were necessary. Volume 5 of ARL includes detailed information and direction concerning the selection of comparable sales and the types of adjustments that may be required when conducting a sales comparison approach to determine the value of personal property for *ad valorem* purposes. Among the types of adjustments it lists that may be required are the financial terms of the sale, the time of the sale, the location of the sale, the physical characteristics of the property, the condition of the property, the brand name, and extra accessory items. *See* 5 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 3, at 3.22 (rev. Jan. 2021). Although Mr. Calvanico recognized in his testimony that the ARL cautioned that it is important to adjust for differences between a comparable sale and the appraised property, he failed to compare the subject assets and the 2017 sale and adjust for any dissimilarities. Mr. Calvanico stated that he considered as a comparable "the sale of the subject itself." However, the 2017 sale was not a sale of the subject assets, and the necessity for adjustments for differences was therefore evident. None of the usual comparisons were conducted. For instance, there was no analysis of the rights conveyed, the financing terms, the conditions of sale, location, physical characteristics or other customary aspects of comparison.

The Board concludes from the evidence and testimony that a market approach to value was not developed and that the conclusion to value based on this approach to value was neither reliable nor credible. Absent other supporting market data, including more sales, or an adjustment grid showing comparison of the sales, consideration of a single, unadjusted sale is insufficient to warrant definition as a market approach to value. The simple presentation of the unadjusted $4,000,000 sale of all of the assets and interests of the Dragon Trail System, which spanned five counties in Utah and Colorado, and which includes assets not here under appeal, is not a reliable or credible measure of market value of the subject assets.

The Board's conclusion is supported by instructions included in Volume V of the ARL. These instructions support the consideration and application of the market approach using market sales, but require significant support of the sales, inclusion of more than one sale, adjustments based on units of comparison and confirmation that a sale includes installation, sales/use tax, and the cost of freight to the point of use. (Exhibit 19, p. 16.) None of these were sufficiently provided in Mr. Calvanico's testimony or Appraisal Report. The ARL procedures support the Board's conclusion that a single sale price reference for all assets across five counties, not coextensive with the subject assets, provides insufficient support for value for the appealed subset of assets, which are located in one of the five counties.

Without clear identification of the property chosen as a sale comparable, and the terms of the sale, an appraiser would be unable to properly compare the extent of that sale's similarities and dissimilarities to the property being appraised, and make any appropriate adjustments to the sale price to arrive at a credible market approach conclusion of value. The 2017 transaction

included assets outside of Rio Blanco County – in additional Colorado Counties and one Utah County. Petitioner did not clearly identify the assets sold in the 2017 purchase, or even which assets were located in Rio Blanco County. In addition to spanning more counties than just the subject's county, the sale also transferred interest in many assets other than the subject assets. These included, but were not limited to, producing wells, interests in contract of existing leases, processing plant assets, collection and transmission pipelines, work force in place, and management – assets that would require adjustment to the sale price, in a proper market approach to value. Of those interests, all of which were part of the $4,000,000 purchase price, only the pipelines and processing machinery and equipment were part of this appeal. Mr. Lehn testified to his opinion that 2017 sale included wells, wellheads, reserves, waivers, escrow, intangibles, and perhaps unknown liabilities, dissimilar to the subject assets. Mr. Martinson testified that the Agreement allocated the entire purchase price "to the wells," referencing Exhibit 7, p. 21, section 2. The complex 2017 Purchase and Sale Agreement did not specify any costs or values attributable to the subject assets, nor did it indicate which interests were ascribable to which counties. (*See* Exhibit 7 p. 13 - 335.) The 300-page agreement provided for some upward adjustments to the price, a funding agreement, and detailed terms of sale. The Board must presume that a different set of assets in this complex industrial market would involve not only different values, but also different sale considerations, compared to the subject assets. It seems reasonable to presume a sale of the subject assets would involve different assumptions of obligations and liabilities, conditions of sale, and other factors that must remain the subject of speculation because Petitioner presented no evidence on the matter.

It was not a credible conclusion supported by the evidence that based on the fact that "more assets" transferred in the 2017 sale, the subject assets should be considered to have a "value ceiling" of $4 million, but more likely be valued at some fraction of that. First, it was not clear which assets transferred. No information was presented about how the assets that transferred in the 2017 sale compared to the subject assets, or what liabilities and other factors were involved in the sale to make it comparable to what a likely buyer would pay for the subject assets. It was at least clear that the 2017 sale involved wells and wellheads, but not clear how that might have influenced the negotiated 2017 value. Second, transactions of property like the subject assets involve consideration of complex, price-impacting factors such as the negotiation of liabilities, reserves, waivers, escrow, and intangibles, and no evidence was presented to show that these factors were accounted for in a conclusion that $4 million is a value ceiling for the subject assets.

Mr. Calvanico, when asked why he did not adjust the 2017 sale price for differences with the subject assets, had no answer other than that he placed more weight on his cost approach conclusion of value. The fact that Mr. Calvanico arrived at a cost approach conclusion of value that was so much higher than $4 million strongly suggests the $4 million sale is not an accurate indicator of market value. Mr. Calvanico's attempt to explain this by stating that he *could* have arrived at a lower cost approach, due to the existence of more obsolescence that his concluded valued accounted for, does not change the fact that he did not; the cost approach conclusion he arrived at and presented in evidence was $9,700,000. This is an indication that the substantially lower 2017 sale price of $4,000,000 was not an accurate indicator of market value.

There was insufficient evidence in the record to show that a credible value was concluded to under a market approach. The Board places no weight on the 2017 sale in its deliberative analysis of the ad valorem value of the subject assets.

C. Petitioner's and Respondent's Cost Approach Value Conclusion

The Board next proceeds to evaluate the evidence regarding the common approach to value each side developed, the replacement cost new less depreciation.

Mr. Calvanico testified that he relied most heavily on his cost approach, but that it was influenced by the sale of the subject assets. Mr. Calvanico was unable to describe how he reconciled his cost and market approach conclusions of value to arrive at his reconciled value. To the extent he placed any reliance upon the 2017 $4,000,000 sale, the above critique of his "market approach" conclusion applies. Although Mr. Calvanico devoted significantly more time in his testimony and more of his appraisal report to his cost approach, he failed to provide adequate support or evidentiary documentation for his concluded replacement cost new of the machinery, equipment or pipeline comprising the subject assets.

Mr. Calvanico testified the difference between his cost approach and Mr. Lehn's cost approach was that Mr. Calvanico did not use a 15% good floor, and Mr. Calvanico used Marshall & Swift data instead of market data to calculate replacement cost new. The Board finds this to be true, and finds that Mr. Lehn adhered most closely to ARL guidance, and that where he departed from it he did so with more justification than Mr. Calvanico.

To arrive at a replacement cost new for pipeline assets, Mr. Calvanico testified he relied on Marshall & Swift and cost information "in his files" that corroborated that the Marshall & Swift data is useful and relevant. He stated the figures on p. 23 of his appraisal report were figures from Marshall & Swift, already adjusted, but gave no further information on how he calculated the adjustments.

Further, Mr. Calvanico's application of a 7% good floor for physical depreciation of all of the pipeline assets and the machinery and equipment, in contradiction of the 15% good floor recommended by the ARL, is equally unsupported. The 2017 sale was used as support for the depreciation factors as low as a 7% good floor in the cost approach. The Board finds that the qualitative approach to measuring the utility of the plant applied by Mr. Calvanico, being prescribed by the ARL, has merit, but is not appropriately applied to the production capacity of the plant. The ARL states that,

> This floor may be exceeded when the market or income approach indicates a lower value or when the pipeline has been abandoned and no longer is capable of being used. Any pipeline value established from the use of the cost approach should be crosschecked with sales comparison (market) and income information sources, if possible, and the appropriate value used.

(Exhibit 19, p. 11.)

However, the assets under consideration in this appeal are not abandoned or no longer capable of being used. There was no income approach performed that indicated a lower value. The market approach was fundamentally flawed, as discussed above. In addition, Mr. Calvanico provided no testimony or documentation establishing that he crosschecked the value with sales and income information sources. The Board was not persuaded that he had good reason to depart from using the percent good percentages indicated by the ARL. His use of straight-line depreciation rather than the ARL- employed curve resulted in a lower valuation of the subject assets, but he did not provide good cause for the departure. The Board finds a diversion from the ARL curve should have been backed up by documentation showing the exception was applicable. However, Mr. Calvanico did not provide evidence to support his conclusion that the market identifies that departure from the ARL-prescribed depreciation curve is warranted, and application of a different depreciation rate is necessary. He stated that his information is better or different than the information relied on by the ARL, but did not present it for the Board's consideration. To estimate the machinery and equipment value, he used salvage value and a 7% good figure he stated was suggested by Marshall & Swift, the ARL, and corroborated by 30-40 comparable sales of machinery and equipment of similar vintage to the subject assets. However, the Board was not provided with any details of these sales.

Mr. Calvanico testified regarding the Special Procedures for Newly Acquired Used Pipeline Personal Property that are prescribed in the ARL, Volume V, Chapter 7. (*See* Exhibit 19, p. 11.) Mr. Calvanico represented that the sale price of the assets in the 2017 purchase represent their market value, and he conferred on the sale the status of "actual acquisition cost" as referenced in the ARL procedures. (*See* 5 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 7, at 7.16 (rev. Jan. 2021).) Applying the procedures, he testified that the $4,000,000 2017 sale equated to the acquisition cost of the assets and should be viewed as Reproduction Cost New Less Depreciation and that the value of the assets be "frozen" until that component is permanently taken out of service. Mr. Calvanico estimated that 45% of the $4,000,000 purchase of all of the assets spanning 5 counties would reasonably be the value of the appealed assets portion of the Rio Blanco County part of the sale. He then suggests that that value would represent the ceiling value of the assets, and the subject assets' value would be a "fraction thereof."

The Board notes that nowhere in his appraisal report does Mr. Calvanico make reference of the Special Procedures. Mr. Calvanico did not testify to a specific value that would result in the application of the Special Procedures if the sale price of the assets were deemed to be the acquisition cost. By inference, and based on testimony, the Board computes that the value Mr. Calvanico is advocating as the ceiling value of the assets is $4,000,000 and that 45% of the sale price would be attributed to Rio Blanco County, resulting in a value of $1,800,000. At the end of his direct testimony, Mr. Calvanico referred to his Reconciled Value found in his appraisal report. (Exhibit 17, p. 31 of 48.) Mr. Calvanico reiterated his value indications based on the Cost Approach and the Market Approach and confirms his reconciled value at $6,700,000. He makes no mention or reference to any value indicated under the Special Procedures.

The Board finds the percent good floor adopted by Mr. Lehn was well supported. Mr. Lehn concluded the majority of the assets in the subject assets met or exceeded the age corresponding to 15% good. Mr. Lehn carefully considered the ARL trending tables, and updated

the tables for use for this case to make them specific to the industry, to Rio Blanco County, to the tax year at issue, and to the assets here considered. He spoke with a DPT representative about the resulting figures and felt encouraged by the DPT that his depreciated schedule conclusions were correct. Mr. Lehn's rejection of the characterization of the subject assets as "scrap" or "salvage" was reasonable.

The Board suspects that the functional economic factors applied by both appraisers are likely too high. The ARL provides a formula for calculating functional/economic obsolescence. *See* 5 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 7, at 7.14, (rev. Jan. 2021). Mr. Calvanico testified the previous year calendar year's throughput was 25 MMCF (million cubic feet) and the Normal Operating Design Capacity (from the Petitioner's engineers) was 60 MMCF. This resulted in a factor of 17%. However, Mr. Knight testified that the operating capacity was for two trains of conveyance – one at 15 MMCF the other at 45 MMCF. The testimony was that train one, at 15 MMCF, was "mothballed" at the time of purchase. Therefore, the formula denominator should be 45 MMCF, not 60 MMCF. This would calculate to a diminished capacity rate reflecting functional and economic obsolescence of 12%, rather than 17%. With a 12% factor applied in Mr. Calvanico's analysis, the subject assets' value would rise to $10,227,000. With a 12% factor applied to Mr. Lehn's analysis, the assets' value would be around $42,280,000. Regardless, Mr. Lehn employed an overall functional economic obsolescence factor of 36.13%, over double the concluded obsolescence factors employed by Mr. Calvanico, and higher than what the Board supposes to be indicated, which lends further support to the value ordered by the Board below.

In general, the Board finds Mr. Lehn's appraisal methodology and conclusion of value under the cost approach to be appropriately supported, and to be consistent with the direction of the ARL. However, under cross-examination Mr. Lehn admitted to certain errors in his $32,131,440 cost approach conclusion. The Board finds these errors to be within discrete calculations, and to be correctable in order to arrive at a revised and corrected concluded value.

D. Board's Concluded Value

The Board concludes to a value of $29,592,388 after applying adjustments calculated based on admitted errors that came to light during Mr. Lehn's cross-examination testimony.

First, Mr. Lehn values 145,346 feet of 12" diameter pipeline at $148.79 per linear-foot, resulting in a fully depreciated cost of $3,935,938. The cost factor indicated in Exhibit H, page 0077 of 276, for 12" diameter pipe, however is $107.67 per linear foot. This results in a totally depreciated value of $2,848,191. Due to this error, the Board determines that a deduction of $1,087,746 should be made from Mr. Lehn's appraised value.

Second, the Board finds that Mr. Lehn misidentified and overvalued the engine compressors included within the subject assets. (Mr. Lehn conceded to this during the hearing.) The Board finds Mr. Calvanico correctly identified two 3516 HP Caterpillar engine compressors, and that by using the physical/ functional/ economic factor applied by Mr. Lehn would result in a fully depreciated combined cost of $1,337,220. In contrast, Mr. Lehn valued the engine

compressors at a fully depreciated cost of $2,787,526. Due to this error, the Board determines that a deduction of $1,450,306 should made from Mr. Lehn's appraised value.

The total necessary deduction from Mr. Lehn's appraised value of $32,131,440 is therefore $2,538,132, resulting in a value for the subject assets of $29,593,388.

Given that this figure is lower than the CBOE-assigned value of $32,131,440, the Board concludes that Petitioner has met its burden of proving that the assigned value for tax year 2019 is incorrect.

ORDER

The Petition is **GRANTED**. The Rio Blanco County Assessor is ordered to reduce the value of the subject assets to $29,593,388.

APPEAL RIGHTS

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 6th day of April, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

Samuel M. Forsyth

Concurring Board Member:

Gregg Near

Concurring without modification pursuant to § 39-2-127(2), C.R.S.

Concurring Board Member:

Diane DeVries
Concurring without modification pursuant to § 39-2-127(2), C.R.S.

I hereby certify that this is a true and correct copy of the order of the Board of Assessment Appeals.

Yesenia Araujo