

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
SPIRE STORAGE WEST LLC) Docket No. **2018-51**
FROM A DECISION BY THE UINTA)
COUNTY BOARD OF EQUALIZATION)
(2018 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

Walter F. Eggers, III, Holland and Hart, LLP, appeared on behalf of Petitioner Spire Storage West LLC (Spire).

Mark W. Harris, Harris Law Office, P.C., appeared on behalf of Uinta County Assessor Lori Perkins (Assessor).

SUMMARY

[¶1] Spire acquired Ryckman Creek Resources LLC (Ryckman Creek), a natural gas storage business in Uinta County, Wyoming. Following its December 2017 acquisition, Spire appealed the Assessor’s 2018 assessed valuation of the Ryckman Creek facilities to the Uinta County Board of Equalization (County Board). Having acquired the Ryckman Creek business in a bankruptcy proceeding, Spire claimed that Assessor overvalued the facilities at \$91.68 million. Spire asserted the natural gas storage facilities should be valued at \$26.19 million. The County Board affirmed Assessor’s valuation. Spire appeals that decision to this Board.

[¶2] The State Board “shall hear appeals from county boards of equalization ... upon application of any interested person adversely affected[.]” Wyo. Stat. Ann. § 39-11-102.1(c) (2017). A taxpayer or assessor may file an appeal with the State Board within 30 days of the County Board’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). The County Board issued its final decision on September 19, 2018. (Cty. Bd. Decision, 13, R. at Tab 34). Spire filed its appeal within 30 days of the County Board’s decision. Notice of Appeal (Oct. 19, 2018). Spire timely appealed, and we have jurisdiction.

[¶3] The State Board, Chairman David Delicath, Vice-Chairman E. Jayne Mockler, and Board Member Martin L. Hardsocg, having considered the County Board’s record and the parties’ submitted briefs and oral arguments, affirms the County Board’s decision in part, reverses in part, and remands the assessment to Assessor for a new valuation.

ISSUES

[¶4] Omitting Spire's argued factual predicate to each issue, Spire identifies the following issues:

- a. Did the County Board violate Petitioner's constitutional and statutory rights when it refused to consider the Bankruptcy Court's opinion?
- b. Was the County Board Order's [sic] contrary to Wyoming property tax law, as described by the Wyoming Supreme Court and this State Board?
- c. Did the County Board violate Wyoming law when it affirmed an assessment that the Assessor's own expert witness testified did not represent fair market value?
- d. Was the County Board's finding that the 2017 Transaction represented an acquisition of only 80% of Petitioner contradicted by the record?
- e. Did the County Board improperly disregard this independent and current appraisal when it affirmed the Assessor's decision to rely on an old valuation of Spire Storage property?

(Spire Opening Br. 5-6) (emphasis omitted).

[¶5] Assessor restates the issues as:

- I. Was the County Board's decision supported by substantial evidence when it rejected Petitioner's evidence or weighed Petitioner's evidence and stated the reasons for rejection or weighing of the evidence?
- II. Was the County Board's decision in accordance with the law?
- III. Did the County Board act arbitrarily or capriciously and was its action in accordance with procedures required by law?

(Assessor Br. 2).

[¶6] The Board restates the issues as follows, and summarizes its answer to each:

1. Did the County Board err in affirming Assessor's decision to reject the purchase price paid by Spire in 2017 to acquire the Ryckman Creek business in bankruptcy, which Spire offered as evidence of the business facilities' value for tax purposes? The answer is no.
2. Did the County Board err when it refused to consider a Delaware Bankruptcy Court's decision, to the extent the bankruptcy court addressed and discussed the properties' fair market value? The answer is no.

3. Does substantial evidence support the County Board decision to prefer the Assessor's valuation over the valuation offered by Spire's hired appraiser? Substantial evidence supported the County Board's rejection of Spire's asserted valuation; however, Spire submitted sufficient evidence to overcome the presumption favoring Assessor's valuation.

PROCEEDINGS; EVIDENCE PRESENTED TO THE COUNTY BOARD

The Property

[¶7] The Ryckman Creek natural gas storage facilities¹ are located about 18 miles north of Evanston, Wyoming. (Assessor Ex. C, 010).² The facilities consist of wells, pipelines, compressors, and other equipment required to inject natural gas into, and recover natural gas from, a depleted natural gas reservoir. The equipment also includes equipment to treat the gas so that it can be transported by pipeline. (Ex. T-9, Spire 0077; Tr. 24-25). The parties agreed as to the equipment at issue. (Ex. T-1, Spire 0001-27; Assessor Exs. B, 002-8, C, 009-16).

[¶8] Natural gas storage facilities serve customers who seek to avoid supply disruptions; typical customers are utilities and power generation facilities. (Tr. 25). The Ryckman Creek Facilities have a potential output capacity³ of 35 Bcf⁴ of natural gas per year. Operational problems, however, reduced the output capacity by almost half. (Ex. T-9, Spire 0077, 0080, 0095; Tr. 26-29, 32-33, 78-79); *see infra* ¶¶ 13-15.

Ryckman Creek's decline and sale in bankruptcy

[¶9] Spire's⁵ Vice President, Ms. Laura Luce, testified about events prior to, and during, the preceding business entity's bankruptcy. Ryckman Creek Resources, LLC (Ryckman Creek), she explained, had encountered various business and operational difficulties in 2015 and struggled to retain customer contracts. (Tr. 20-21, 26-27, 31-35, 45-46); *infra* ¶¶ 13-15. The previous owners notified interested parties that they would put no more money into the operation. (Tr. 45-46). Ryckman Creek filed for chapter 11 bankruptcy protection

¹ Spire acquired the Ryckman Creek facilities in 2017. "Ryckman Creek" reflects the previous owners' designated name for the business and facilities. Because the assessment refers to the facility as "Ryckman Creek," we shall likewise refer to the natural gas storage facilities as the Ryckman Creek facilities.

² The record is not sequentially numbered, so we shall identify exhibits in the record as the parties labeled and numbered them before the County Board. We identify Assessor's exhibits with letters, such as "Assessor Ex. C," and pages in Assessor's exhibits are numbered as "00**". We identify Spire's exhibits as "T- number," and pages are numbered as "Spire 00**." Other parts of the record are identified by "Tabs" and the pages specific to documents within each Tab, as "R. at Tab **, (page number) **."

³ Although not concisely defined in the evidence, "Output capacity" is logically inferred as the quantity of gas that the Ryckman Creek reservoir and equipment may inject, store, and retrieve for transportation to customers. (Ex. T-9, Spire 0077).

⁴ A "BCF" is a billion cubic feet. Schlumberger Oilfield Glossary. <https://www.glossary.oilfield.slb.com/en/terms/b/bcfd.aspx>.

⁵ Spire is a subsidiary of Belle Butte, LLC, which itself is owned by parent company Spire Inc. (Tr. 22-23, 39). Belle Butte, LLC and Spire Inc. hold multiple utilities and associated facilities in Missouri. *Id.*

in 2016. (Tr. 20-21, 26-27, 31-35, 45-46). Although as many as 10 to 15 parties investigated the possibility of acquiring the Ryckman Creek assets, no offers were received. *Id.*

[¶10] Ms. Luce explained that, because operational challenges hampered Ryckman Creek's continued operation, an acquiring entity would need to invest considerable sums to continue its operation. Further, lenders were unwilling to lend additional money to continue Ryckman Creek's operation. Operating as a "debtor-in-bankruptcy,"⁶ its funds neared depletion in 2017. (Tr. 34-36). Creditor Wells Fargo initiated a formal sales process in August of 2017, again soliciting interest from potential purchasers. In that process, Wells Fargo assembled materials describing the Ryckman Creek facilities and widely circulated those among natural gas storage industry participants. (Tr. 37-38).

[¶11] Ms. Luce testified that without a buyer or some other solution allowing the business to continue, Ryckman Creek would finally shut down at the end of 2017. (Tr. 38, 61). Three bidders offered to acquire the business in late 2017. (Tr. 38-41). Belle Butte prevailed with an offer on December 13, 2017 of \$16 million in cash, a \$10 million note paid over time, and an obligation to invest \$15 million to continue the business' operation going forward. (Ex. T-3, Spire 0054; Tr. 41-42, 44-49, 62). The parties memorialized the acquisition in a "Plan Sponsor Agreement" between Ryckman Creek and Belle Butte LLC. *Id.*; (Ex. T-3, Spire 0009-53). Spire acquired 80% of the company, but 100% of control over the company⁷; the creditors in bankruptcy retained 20% of the company in the form of minority, nonvoting shares. (Ex. T-3, Spire 0019; Tr. 49-50, 62, 75-76).

[¶12] Ms. Luce testified that the sale of Ryckman Creek followed a "traditional industry sale process" similar to other sales with which she was familiar. (Tr. 51). She further opined that Spire's asserted value of \$26 million for the storage facilities was "specific to a market-ran process that had nothing to do with the bankruptcy."⁸ (Tr. 52).

Facilities' operational problems

[¶13] Evidence of Ryckman Creek's operational problems played a prominent role in the hearing, both to explain the company's difficulty finding a purchaser before and during bankruptcy, and as information to be considered in the valuation processes. Ryckman Creek's high power consumption and costs were central to its poor performance and

⁶ A "debtor-in-bankruptcy" status occurs when a bankruptcy court allows a bankrupt entity seeking reorganization under chapter 11 of the Bankruptcy Code to operate the business after filing bankruptcy, as opposed to empowering creditors or other parties to assume operational control of the reorganizing entity. *See* 11 U.S.C. § 1101 (1978).

⁷ Evidence concerning Spire's acquired interest and control of Ryckman Creek generated disagreement and/or confusion among the parties and County Board. The County Board cited this disagreement as part of its reason to reject Spire's asserted valuation. (Assessor Br. 8-9, 31, 40; Spire Reply Br. 27-28; R. at Tab 34, Cty. Bd. Decision at 4, 7); *infra* ¶ 41.

⁸ Spire elicited this testimony in support of its position that Spire's purchase of Ryckman Creek, even though in bankruptcy, reflected the facilities' fair market cost for tax valuation purposes. *See also infra* ¶¶ 18, 29; (Concl. of Law, § C.1).

diminishing returns; the facilities operated solely on electricity, a design decision that Spire lamented as a prime reason for the business' financial difficulties. (Ex. T-5, Spire 0055, T-9, Spire 0077-80, 0093-95; Tr. 29, 59-60, 76-78). Ms. Luce cited as an example the month of October, 2016, during which Ryckman Creek paid \$860,000 in one month for electricity. (Tr. 29).

[¶14] Spire also discovered that Ryckman Creek produced large quantities of water and needed to install additional facilities, including wells and other equipment, to handle that water. (Tr. 27, 60, 76-78).

[¶15] Third, although the Ryckman Creek reservoir was a sweet gas field when it produced gas, gas recovered from the reservoir after injection for storage contained hydrogen sulfide (H₂S)⁹ and nitrogen, requiring additional costs. (Tr. 27-29, 76-78).

Competing valuations

[¶16] On behalf of Assessor, valuation consultant T.Y. Pickett valued the natural gas storage facilities, along with other complex industrial properties, a service T.Y. Pickett has performed on behalf of Uinta County for decades. (Tr. 166-67, 170-71, 183). Mr. Robert Lehn, a T.Y. Pickett employee of 26 years with extensive experience in the oil and gas industry, valued the property and testified before the County Board. (Tr. 195- 99). On April 20, 2018, Assessor valued the Ryckman Creek storage facilities at \$91,680,440. (Ex. T-2, Spire 0008; Assessor Ex. K, 027; Tr. 90-91); *see infra* ¶¶ 38-39.

[¶17] Spire hired K.E. Andrews, an appraisal consulting firm, to conduct an independent appraisal of the Ryckman Creek facilities. (Tr. 82-83). K.E. Andrews employee, Mr. Daniel Kistler, led the appraisal process and testified in support of an appraised value of \$26.19 million for the facilities. (Exs. T-9, Spire 0072-0169, T-10, Spire 0172-73; Tr. 81-84, 86, 102-25, 129-30). Mr. Kistler, designated an expert witness by the County Board, is accredited by the American Society of Appraisers (ASA). (Tr. 80-83, 85).

Spire's proffered valuations

[¶18] Mr. Kistler initially submitted "renditions" to Assessor on March 29, 2018, to press for a reduced 2018 tax valuation of \$26 million.¹⁰ (Tr. 84, 88-90; Ex. T-1, Spire 0001-7; Assessor Ex. B, 002-8). In support of the rendition value of \$26 million, Mr. Kistler cited the sales price Spire paid for the property in bankruptcy. *Id.* In further support of his rendition value, Mr. Kistler emailed Mr. Lehn (the Assessor's consulting appraiser) a list

⁹ Natural gas is "sweet" when it does not contain significant quantities of hydrogen sulfide (H₂S) or carbon dioxide (CO₂) and requires minimal or no processing. Natural gas is "sour" and requires extensive processing when hydrogen sulfide and/or carbon dioxide must be removed. Because hydrogen sulfide, in even small amounts, is potentially lethal, it must be processed out of the gas and safely disposed of. (Tr. 26-27, 78, 232-34).

¹⁰ Because Assessor generally objects to the timing of Spire's valuation submissions in response to Assessor's noticed valuation, we review the timing and nature of Spire's interactions with Assessor and her contract appraiser, T.Y. Pickett. Spire responds that Assessor failed to properly consider the additional information offered through K.E. Andrews' collaborative efforts. (Spire Br. 14-18, 45-47).

of considerations describing operational problems at the facilities, all of which were later detailed in its Appraisal Report. (Ex. T-5, Spire 0055; Tr. 93-94); *supra* ¶¶ 13-15; *infra* ¶¶ 21-28. He cited the previous owners' exclusive use of electricity for power, which he argued rendered operation economically unfeasible. *Id.* He noted that gas recovered from the reservoir contained hydrogen sulfide, requiring an additional expense. *Id.* He referenced reduced storage/extraction capacity and increased pipeline costs. *Id.* He stated that the business had incurred losses of more than \$80 million per year. *Id.*

[¶19] Citing these factors, Mr. Kistler initially applied an obsolescence factor of 85% to the Replacement Cost New Less Depreciation (RCNLD) value, \$168,119,820, reducing that value to \$26 million. (Ex. T-1, Spire 0006).

[¶20] Disagreeing with the 2018 assessed valuation of \$91.68 million, Spire appealed to the County Board. (Assessor Ex. E, 018-19; Tr. 91-92, 178). Mr. Kistler opined that Assessor's assigned value of \$91,680,440 was not the Ryckman Creek facilities' fair market value. (Tr. 128).

[¶21] Following Spire's appeal, Mr. Kistler and other K.E. Andrews associates prepared an appraisal of the acquired Ryckman Creek facilities to determine their value as of January 1, 2018, which they completed July 25, 2018. (Ex. T-9, Spire 0071-0169; Tr. 102-04).

[¶22] A recurring point in the Appraisal Report was the overall natural gas storage market decline which played an integral part in the Ryckman Creek facilities' diminished value. Mr. Kistler recounted that starting in 2008, several natural gas market developments hurt Ryckman Creek's profitability, including the development of hydraulic fracturing practices, horizontal drilling, and production from shale. These recently developed or improved production techniques greatly increased the market supply of natural gas. As production increased, supply volatility decreased. Consequently, the United States became an exporter of natural gas and natural gas prices generally declined. Demand for natural gas storage services declined as well. Exhibits to the K.E. Andrews Appraisal Report supported Mr. Kistler's review of natural gas and natural gas storage market conditions. (Tr. 85-86, 107-111; Ex. T-9, Spire 0080-83, 0087-89, 0134-69).

[¶23] Discussing his valuation approach, he testified that in accordance with ASA guidelines, he was required to consider (but not necessarily use) three valuation methods: the cost method, income method, and the market method (also called the sales comparison approach). He added that his team also consulted the Wyoming Department of Revenue's valuation guidelines. (Tr. 111-13; Ex. T-9, Spire 0090-99).

[¶24] Describing his application of the market approach, Mr. Kistler reviewed the sales of natural gas storage facilities in Texas and Mississippi. (Exs. T-8, Spire 0065-68, T-9, Spire 0091-93, 0113, 0120-33; Tr. 113-16). In his Appraisal Report he sought to tie the value to each entity's capacity to receive and "turn" gas around, or retrieve it, which he referred to as the "per turn capacity." *Id.* To compare the other facilities' values relative to the Ryckman Creek facilities, Mr. Kistler calculated the value of each "turn," emphasizing that those values declined following 2008. *Id.* He admitted, however, that neither of the natural

gas storage businesses from Mississippi or Texas that he compared to Ryckman Creek had sold in bankruptcy. *Id.* Applying the market approach, K.E. Andrews concluded that the Ryckman Creek facilities' value was \$23 million on January 1, 2018.¹¹ *Id.*

[¶25] Referring to Ryckman Creek's 2017 financial statements and net losses, Mr. Kistler determined that he could not use the income valuation approach because the value would be zero. (Ex. T-9, Spire 0093-94, 0115-18; Tr. 116).

[¶26] Third, Mr. Kistler and his appraisal team applied the cost method to the Ryckman Creek facilities. They calculated the cost to reproduce the facilities in their current state. (Ex. T-9, Spire 0094-98; Tr. 117-20); *infra* ¶ 56. Mr. Kistler explained that he included a deduction for functional obsolescence to capture the effect of operational problems, such as the water handling difficulties. *Id.* Deducting \$100 million from value for functional obsolescence, the Appraisal Report stated that: "According to the bankrupt estate's own consultant, an incremental investment in excess of 100 million might be required to get to 35 Bcf of working gas capacity." (Ex. T-9, Spire 0095). However, Mr. Kistler admitted he had not generated or verified this estimate and that Spire had communicated this information to K.E. Andrews.¹² (Tr. 146-47). In addition, Mr. Kistler also applied an "economic obsolescence penalty" (also called an "inutility penalty") to capture the effect on value from sources or events outside of the facilities.¹³ *Id.* (Ex. T-9, Spire 0094-99, 0109-12; Tr. 146-47).

[¶27] Applying the cost method, K.E. Andrews calculated a RCNLD of \$174,906,628 for the facilities. Deducting \$100 million for functional obsolescence and \$45,528,168 for economic obsolescence, K.E. Andrews valued the facilities at \$29,378,460. *Id.* (Ex. T-9, Spire 0098, 0111; Tr. 117-20).

[¶28] Reconciling the market method-based value of \$23 million and the cost method-based value of \$29.380 million, K.E. Andrews weighted each at 50% and finally appraised the facilities at \$26.190 million. (Ex. T-9, Spire 0099; Tr. 119-23).

[¶29] As for Spire's position that the price paid for the business in bankruptcy could reflect the facilities' value, Mr. Kistler testified that Spire's purchase of the business in bankruptcy did not factor into its appraised valuation. (Tr. 124-25, 155-56). Mr. Kistler opined,

¹¹ On cross examination, Mr. Kistler admitted that he had not accounted for various circumstances surrounding these sales, including the time of sale, financing arrangements, the percentage of the properties purchased, operating strengths or limitations of those facilities, whether the sales were arm's length, and others factors. (Tr. 138-43).

¹² In response to several cross examination questions, Mr. Kistler testified that Spire provided much of the basic information upon which he relied—information which Mr. Kistler did not independently verify and much of which was not attached to the Appraisal Report. (Tr. 129-48).

¹³ To arrive at this factor, K.E. Andrews quantified the injection and withdrawal capacities actually used, as a percentage of the facilities' full capacity, to calculate an "average utilization" and, finally, an economic obsolescence factor of 39.2%. (Ex. T-9, Spire 0112).

however, that a sale in bankruptcy, depending on its terms and circumstances, could aide in determining the sold property's fair market value. (Tr. 126-27).

Assessor's assessed valuation

[¶30] T.Y. Pickett employee Robert Lehn, on behalf of Assessor, applied the cost method to the Ryckman Creek natural gas storage facilities to arrive at a value of \$91,680,440. *Supra* ¶ 17; (Assessor Ex. C, 9-16; Tr. 166, 176-77, 209). Assessor testified that valuations of industrial equipment are subject to the Department of Revenue's guidelines set forth in its annually published "Personal Property Valuation Manual." (Tr. 170).

[¶31] To put her valuation in historical context, Assessor reviewed the five previous valuations of the Ryckman Creek facilities: \$193 million in 2014, \$193 million in 2015, \$220 million in 2016, \$157 million in 2017, and \$91,680,440 in 2018, all derived from T.Y. Pickett's appraisal work. (Assessor Exs. G, H, I, J, K; Tr. 173-74); *see supra* ¶ 16.

[¶32] When she assessed the Ryckman Creek facilities in 2018, Assessor was unaware that Spire recently acquired the business in bankruptcy. (Tr. 178, 193). In response to K.E. Andrews' request that she revise her valuation, Assessor chose not to consider Spire's purchase of the business entity, explaining:

Because it was a – in my opinion, it was a forced sale. It was a bankruptcy. As far as I locally assess, I cannot – in my opinion, it would be just like me valuing a foreclosure as an arm's length sale when we cannot legally do that. Per statute, we cannot use foreclosures as an arm's length sale. And bankruptcy, in my opinion, is not an arm's length sale.

(Tr. 178; *also see* Tr. 180, 194).

[¶33] Like K.E. Andrews, T.Y. Pickett considers all three valuation methods, *supra* ¶ 23, the market approach, income approach, and cost approach. (Tr. 201, 212). Because natural gas storage facilities are not readily sold, Mr. Lehn testified that the market approach was difficult to apply due to lack of information. (Tr. 212, 215-16). He added that adjusting for the differences in locations and other circumstances when comparing sales also added difficulty. *Id.* Mr. Lehn disagreed that Mr. Kister's identified comparable sales from Texas and Mississippi, *supra* ¶ 23, were valid. He noted the different markets and locations each facility served, that different pipelines and markets linked to those locations, and the different sizes and characteristics of those facilities. (Tr. 230-32). He cautioned that using those as comparable sales would require location, timing, financing, and size adjustments. *Id.*

[¶34] Like K.E. Andrews, Mr. Lehn did not apply the income approach because the facility generated no consistent income and, therefore, he could not project income. (Tr. 216).

[¶35] Mr. Lehn testified that he applied the cost method to value the Ryckman Creek facilities. (Assessor Ex. C, 009-016; Tr. 217-28). He identified and classified each piece

of equipment, identified the original installation cost, identified the replacement cost new (RCN), the year acquired, and the deduction for functional and/or economic obsolescence. *Id.*

[¶36] Mr. Lehn stated that T.Y. Pickett always exceeds the appraisal standards presented in the Department of Revenue's personal property valuation manual, which also identifies oil field equipment and applicable regulations. (Tr. 210-11, 229). Mr. Lehn considered Spire's \$26 million acquisition of the business in bankruptcy, but did not include it in his appraisal analysis. (Tr. 229-30, 258-61). He explained "in the case of a complex property like this, it can't be used because it's not a fair market value consideration. It's not arm's length. It fails – not only that, one point is even if it was, for some reason, valid, one point does not a market make. It takes an array to make a database for comparable sales." *Id.*

[¶37] Mr. Lehn knew of some of the Ryckman Creek operational problems, but not all of them, nor the extent of the problems. (Tr. 232-35, 237, 254-55). He testified "[i]f I would have known about it, I guess I would look at things differently, but I would have to see some type of analysis about what the plan is to deal with it or how to operate about it." (Tr. 234). He was unaware that Spire estimated the cost to cure at approximately \$100 million. (Tr. 237); *see supra* ¶ 26.

[¶38] Speaking of his 2018 valuation of the facilities at \$91,680,440, Mr. Lehn explained how the valuation dropped from \$157 million in 2017. (Assessor Ex. C, 010; Tr. 90-91, 241-47, 261-63). Mr. Lehn stated that 2017's assessed taxable value at \$157 million, *supra* ¶ 31, was negotiated and settled at \$90 million in an agreement between Assessor and the previous owner during the bankruptcy, which the bankruptcy court approved. *Id.* The 2018 increase in value from \$90 million to \$91,680,440, Mr. Lien continued, reflected the value of additional properties installed in 2017, the effect of changes in trending tables, and an increase in the property values generally. *Id.* Mr. Lehn stated that "without that [settlement] decision, I would be at 158.5 – million." (Tr. 243). He disavowed any knowledge of how the base \$90 million value from 2017 was formulated, attributing that decision to the Assessor and parties with whom she negotiated. (Tr. 244-47).¹⁴

[¶39] Mr. Lehn clarified his reliance on the \$90 million settlement agreement in 2017:

I was not seeking to upset the apple cart. I was seeking the last known point where people agreed. I had to tweak it because of some minor changes that occurred. Some of them are mechanical in nature because of the Marshall Swift indexing slightly increasing. Some were because we had previous construction work in progress that had not been properly booked as completed yet, and so we did so and it caused a slight uptick.

¹⁴ The settled \$90 million valuation from 2017 is not well explained in the record. (Tr. 241-47). Inferable from the arguments and record, the \$91,680,440 valuation for 2018 is only marginally the product of T.Y. Pickett's appraisal analysis. *Id.*; (Tr. 245-47).

It was not – it was done basically to remain at the 90 million level as closely as we could from the previous year.

(Tr. 262).

County Board's decisions

[¶40] Just prior to closing arguments, the hearing officer informed the parties that the bankruptcy court for the district of Delaware issued a ruling in the Ryckman Creek bankruptcy case. The ruling addressed contract interpretational disputes among several parties to the bankruptcy proceedings. (Tr. 263-66). She distributed the decision to the parties and discussed how the County Board might consider the ruling, if at all. *Id.*; (R. at Tab 29); *In re Ryckman Creek*, 2018 WL 4178692 (Bankr. D. Del. Aug. 29, 2018). The hearing officer permitted the parties to submit written briefs concerning whether the County Board should consider the bankruptcy court's ruling. (R. at Tabs 31-32). Over Spire's objection, the County Board refused to consider the bankruptcy decision in its adjudication of Spire's tax appeal. (Cty. Bd Order Closing Evidence & Br., R. at Tab 33). The County Board determined the bankruptcy court's ruling to be of limited relevance and decided to limit its review to evidence presented at hearing. *Id.*

[¶41] The County Board affirmed Assessor's valuation. The County Board disagreed that Assessor erred when she did not consider Spire's December 2017 acquisition of Ryckman Creek for \$26 million as part of the business' reorganization in bankruptcy. (Cty. Bd. Decision, 6-8, R. at Tab 34). The County Board agreed that the bankruptcy sale did not generate a price reflecting the facilities' fair market value because undue compulsion to sell existed, Assessor did not have timely access to supporting transactional information, the bankruptcy transaction included non-cash terms and consideration, and the County Board could not reconcile Spire's majority ownership of Ryckman Creek from the minority shareholder's ownership. *Id.* For these same reasons, the County Board rejected Spire's reliance on *Thunder Basin Coal Co.* (Cty. Bd. Decision, 12, R. at Tab 34); *see infra* ¶¶ 70-71.

[¶42] Examining Spire's proffered valuation, in which Spire applied the cost and market methods, *supra* ¶¶ 21-28, the County Board concluded that Spire failed to carry its burden of proof. It rejected Spire's application of the Market approach: "Based upon discrepancies in testimony, however, as to the equity interest, value and age of the comparison transactions, the Board finds that this method does not provide sufficient evidence to meet Petitioner's burden in this matter." (Cty. Bd. Decision, 8-9, R. at Tab 34).

[¶43] Comparing each party's application of the cost valuation method, the County Board stated, "In considering the evidence herein, the Uinta County Board of Equalization recognized both Mr. Lehn's and Mr. Kistler's expertise in the areas of property tax valuation and reporting; however, the Board has weighed the credibility and evidence related to said appraisals to favor that of Pickett." (Cty. Bd. Decision, 9, R. at Tab 34). The County Board ultimately decided that, because the presumption favored Assessor's

value, and because the County Board favored Mr. Lehn's appraisal over Mr. Kistler's, Spire failed to carry its ultimate burden of proof. (Cty. Bd. Decision, 11-12, R. at Tab 34).

CONCLUSIONS OF LAW

Standard of Review

[¶44] When the State Board hears appeals from a county board, it sits as an intermediate level of appellate review. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

[¶45] The State Board's standard of review of a county board decision is, by rule, nearly identical to Wyoming Statutes section 16-3-114(c)(ii) (2017), the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing agency decisions. The State Board's review is limited to determining whether a county board's action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2006).

[¶46] Because the State Board Rules are patterned on the judicial review provisions of Wyo. Stat. section § 16-3-114 (2017), judicial rulings interpreting that section offer guidance:

When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial evidence. If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency."

Chevron U.S.A., Inc. v. Dep't of Revenue, 2001 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2001) (citations omitted).

[¶47] The State Board reviews conclusions of law *de novo*:

Questions of law are reviewed *de novo*, and “ [c]onclusions of law made by an administrative agency are affirmed only if they are in accord with the law. We do not afford any deference to the agency’s determination, and we will correct any error made by the agency in either interpreting or applying the law.’ ”

Maverick Motorsports Grp., LLC v. Dep’t of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State, Dep’t of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

[¶48] Likewise, the State Board reviews a county board’s ultimate findings of fact *de novo*:

When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an “ultimate fact,” we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there is an error in either stating or applying the law.

Mtn. Vista Ret. Residence v. Fremont Cty. Assessor, 2015 WY 117, ¶ 4, 356 P.3d 269, 272 (Wyo. 2015) (citations omitted).

[¶49] “The party challenging the sufficiency of the evidence has the burden of showing the lack of substantial evidence to support the agency’s findings.” *Faber v. Dep’t of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238, (Wyo. 2009).

[¶50] “A strong presumption favors the Assessor’s valuation. ‘In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both.’ ” *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006) (quoting *Amoco Prod. Co. v. Dep’t of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). “[A] mere difference of opinion as to value” is not sufficient to overcome the presumption. *Id.* at ¶¶ 28, 34, 126 P.3d at 126-27.

[¶51] If Petitioner successfully overcame the presumption, the “county board was ‘required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof.’ ” *Britt*, ¶ 23, 126 P.3d at 125 (citing *CIG v. Wyo. Dep’t of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001)). The Court explained the shifting of burdens upon overcoming the presumption: “The burden of going forward would then have shifted to the Assessor to defend her valuation,” but the ultimate burden of persuasion remained with the taxpayer to prove by a preponderance of evidence that the valuation was not derived in accordance with constitutional or statutory requirements. *Id.*

Applicable Law

[¶52] The Wyoming Constitution requires that all property be uniformly valued for taxation, and that the Legislature prescribe regulations to secure a just valuation for the taxation of all property. Wyo. Const. art. 15, § 11.

[¶53] Broken into its component parts, the Wyoming Constitution requires: (1) a rational method of valuation; (2) that is equally applied to all property; and (3) provides essential fairness. *Holly Sugar v. State Bd. of Equalization*, 839 P.2d 959, 964 (Wyo. 1992)). It is the burden of the party challenging an assessment to prove by a preponderance of the evidence that at least one of these elements has not been fulfilled. *Helmut J. Mueller Ltd. P'ship v. Treanor*, 2018 WY 131, ¶ 13, 430 P.3d 733, 737 (Wyo. 2018).

[¶54] County assessors are required to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property[.]” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2017).

[¶55] All property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2017). Fair market value is defined as:

[T]he amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time[.]

Wyo. Stat. Ann. § 39-11-101(a)(vi) (2017); *see also* Wyo. Dep’t of Revenue Personal Property Valuation Manual, § 6.1 (2018).

[¶56] Assessors may apply several valuation methods to value personal property; Assessor applied the cost method, while Spire applied the cost and sales comparison methods:

Section 5. Appraisal Methods.

(a) The appraisal techniques which may be used by the County Assessor include the approaches described in this section. Each approach used shall be an appropriate method for the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method in order to calculate or estimate the fair market value of the property. Each approach used shall also consider the nature of the property and the regulatory and economic environment within which the property operates.

(b) General Appraisal Methods and Reconciliation

(i) The Sales Comparison Approach. The comparable sales approach is an appropriate method of valuation when there are an

adequate number of reliable arms-length sales and the properties subject to such sales are similar to the property being valued. For land valuation, the sales comparison is the preferred method of valuation. In the absence of adequate vacant land sales, other techniques may be used including allocation, abstraction, anticipated use, and capitalization of ground rents. In the mass appraisal of properties for property tax purposes it is acceptable to value the properties using generally accepted market modeling techniques. Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect value. The use of this approach depends upon:

- (A) The availability of comparable sales data;
- (B) The verification of the sales data;
- (C) The degree of comparability or extent of adjustment necessary for time differences; and
- (D) The absence of non-typical conditions affecting the sales price.

(ii) The Cost Approach. The cost approach is a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements. In the CAMA system, RCNLD is calculated using Marshall and Swift cost tables. The cost approach is an accepted approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). Market adjusted RCNLD plus land value is an accepted method of the cost approach. Sales prices shall be adjusted for time. Other factors influencing sale price should be considered. The cost approach relies on the principle of substitution in which an informed buyer will not pay more for a property than its comparable replacement. The approach requires:

- (A) Accurate, current land values in the case of real property;
- (B) Accurate, pertinent physical data regarding the property to which cost data may be applied;
- (C) Current cost data which considers appreciation in the case of real and personal property;
 - (I) Costs may be estimated on the basis of typical replacement or reproduction costs.
 - (II) Typical replacement or reproduction costs may be estimated by the quantity survey method, the unit-in-place method, the comparative unit method, or the trended original cost method.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(b)(i), (ii) (2016); *see also* Wyo. Dep't of Revenue Personal Property Valuation Manual, § 6.1-6.5 (2018) (guiding application of income, sales comparison, and cost valuation methods for personal property, including oil and gas production and transportation equipment).

[¶57] An Assessor shall “reconcile” different valuation methods and factors affecting value, but shall attribute the greatest weight to the “value indicator which, in his professional judgment, best approximates the value of the subject property.” Rules, Wyo. Dep't of Revenue, ch. 9 § 5(b)(iv) (2016). Assessors shall also “evaluate all alternative conclusions and correlate the value indicators to arrive at a final estimate of fair market value.” *Id.*

Review of the County Board Decision

[¶58] Spire asserts several independent grounds to challenge the County Board's affirmation of Assessor's assessed valuation. Consistent with our restatement of the issues, *supra* ¶ 6, we first review Spire's claim that Assessor was required to consider and/or use the purchase of Ryckman Creek in bankruptcy to value the facilities. We next address Spire's contention that the County Board erred when it did not consider a ruling from the United States Bankruptcy Court for the district of Delaware issued on the day of the hearing. Finally, we examine the County Board's conclusion that Spire failed to carry its burden of proving Assessor erred in valuing the Ryckman Creek facilities; in conjunction, we examine the County Board's affirmation of Assessor's valuation. *See supra* ¶ 6.

1. Did the County Board err in affirming Assessor's decision to reject Spire's 2017 purchase price paid to acquire the Ryckman Creek business in bankruptcy, which Spire offered as evidence of the business facilities' value for tax purposes?

[¶59] Spire asserts that, even though purchased in bankruptcy only days before Ryckman Creek was to permanently cease as an operating business, Spire's acquisition of the company for \$26 million was nonetheless a fair market value acquisition. *Supra* ¶¶ 11-12, 29; (Spire Br. 29-38). Spire contends that Assessor should have applied its \$26 million acquisition price as a basis for determining the facilities' “cost” under the cost valuation method.¹⁵ *Id.*

[¶60] An assessor, generally speaking, has broad discretion under Wyoming Statutes section 18-3-204(a) (2017) and the Department's regulatory guidance to evaluate and decide whether a given sale price for property reflects that property's fair market value as

¹⁵ The Department of Revenue instructs that:

Replacement costs can be obtained from, but not limited to: Marketplace Sales, Vendor Catalogs, Blue Books, Marshall and Swift, and for oil and gas equipment you may refer to Appendix #1-3 of this manual. The resulting estimates of value utilizing a cost approach is based on the premise that the cost new of a subject property can be reduced by an amount equivalent to the total loss in value that has occurred through all forms of depreciation.

Wyo. Dep't of Revenue Personal Property Valuation Manual, § 6.4 (2018).

defined in statute, or whether a sale is valid as a comparable under the sales comparison method. *See supra* ¶¶ 56-57.¹⁶ An assessor first may decide which valuation method shall apply; reasonable appraisal discretion then pervades application of each method. *Id.*

[¶61] The question before the County Board was not whether Assessor *could* rely upon Spire’s acquisition price to value the facilities, but whether she *erred as a matter of practice and law* in refusing to do so. *See Gray v. Wyo. State Bd. of Equalization*, 896 P.2d 1347, 1351 (Wyo. 1995) (“[I]t is not the duty of this court ‘to determine which of various appraisal methods is best or most accurately estimates FMV [fair market value]; rather, it is to determine whether substantial evidence exists to support usage of the [particular] method of appraisal, and, if so, whether substantial evidence exists to support the manner in which it was used.’ ” (quoting *Holly Sugar Corp. v. State Bd. of Equalization*, 839 P.2d 959, 963 (Wyo. 1992)); *Airtouch Comm., Inc. v. Dep’t of Revenue, State of Wyo.*, 2003 WY 114, ¶ 25, 76 P.3d 342, 352 (Wyo. 2003) (“The choice of the appraiser regarding which indicator of value is most appropriate and the final value itself are matters of appraisal judgment with which this Court will not interfere[.]”). We agree with the County Board that Assessor did not err when she refused to rely upon the Spire acquisition price. Substantial evidence supports the County Board’s decision affirming her on this point. *Supra* ¶ 41.

[¶62] The Legislature defines fair market value as:

[T]he amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time[.]

Wyo. Stat. Ann. § 39-11-101(a)(vi) (2017), *supra* ¶ 55; *see also* Wyo. Dep’t of Revenue Personal Property Valuation Manual, § 6.1 (2018).

[¶63] The paramount concern where distress sales are in play is that “undue compulsion” to buy or sell replaces the open market factors that would otherwise influence the price paid, or, the seller’s decision to sell at all. We have affirmed an assessor’s refusal to rely upon such sales. In *In re Fremont County Assessor*, 2004 WL 871300, Docket No. 2003-111 (April 6, 2004), *aff’d Britt v. Fremont County Assessor*, 2006 WY 10, 126 P.3d 117 (Wyo. 2006), the county board agreed with the taxpayer who offered, as a comparable sale demonstrating a lower value than that assessed, the sale of an adjacent cabin in bankruptcy. *Id.* at *3, at ¶ 6. This Board held that such was not sufficient proof to overcome the presumption that assessor had correctly valued the cabin. We further noted “[a] purchase

¹⁶ The Department of Revenue directs that appraisers consider the strengths and weaknesses of all three valuation methods when appraising personal property to “make an appropriate determination as to which approaches are most applicable.” Wyo. Dep’t of Revenue Personal Property Valuation Manual, § 6.1 (2018). That decision, the Department states, requires an evaluation of the quantity and quality of data available. *Id.*

from a bankruptcy estate is not an open market, fair market sale. A purchase from a bankruptcy estate is an invalid sale because the seller is under compulsion to sell[.]” *Id.* at *6, at ¶ 23.

[¶64] Likewise, the Wyoming Supreme Court in *Gray* agreed that county tax sales were not transactions “in which the price is established by ‘the amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time.’ ” *Gray*, 896 P.2d at 1352; *see also Union Pacific R. Co. v. Wyo. State Bd. of Equalization*, 802 P.2d 856, 861-62 (Wyo. 1990) (holding that Assessor could reject sales achieved through sealed bids because they were not open market transactions).

[¶65] While the question of whether undue compulsion to sell or buy property is factual and entirely dependent upon the circumstances, courts outside Wyoming generally agree that distress sale prices¹⁷ are not representative of a property’s fair market value.¹⁸ Although not a distress sale, the court in *Lakeside Ave. L.P. v. Cuyahoga Cty. Bd. of Revision*, 664 N.E.2d 913 (Ohio 1996) found that the purchaser was compelled to pay more than market value for property and that the purchase price was not, therefore, reflective of fair market value. In that case, taxpayer, a freight business, had leased a ten acre parking and storage lot used to receive shipments from Santa Fe Railroad, its customer. *Id.* at 914. The lot’s owner/lessor notified the lessee freight business that it would terminate the lease, but offered to sell the lot for \$1.2 million, far exceeding its assessed value. *Id.* The freight business purchased the lot and thereafter challenged the assessor’s drastically increased valuation at \$1.2 million, arguing that it had no choice but to pay the exorbitant price. It demonstrated to the tax board that without that lot, it could not serve its primary customer and would almost certainly go out of business. *Id.*

[¶66] The Court acknowledged ongoing disagreement in Ohio’s courts as to whether the price paid for property was the most probative evidence of the property’s value, or whether courts should weigh the price paid along with other factors and circumstances. *Lakeside Ave. L.P.*, 664 N.E.2d at 916; *see also infra* ¶¶ 71-72. The Court found the assessor and reviewing tax tribunal failed to correctly consider the economic pressure brought to bear on the taxpayer:

¹⁷ A “distress sale” is “a form of liquidation in which the seller receives less for the goods than what would be received under normal sales conditions; esp. a going-out-of-business sale. 2. A foreclosure or tax sale.” *Distress Sale*, Black’s Law Dictionary 1538 (10th ed. 2014).

¹⁸ *See* Kristine Cordier Karnezis, Annotation, *Sales price of real property as evidence in determining value for tax assessment purposes*, 89 A.L.R.3d 1126, § 7[a] (1979 & Supp. 2011); International Association of Assessing Officers, *Standards on Valuation of Personal Property*, § 7.2.2 (2018) (“Sales of used items are generally few and are often liquidation sales, which typically are not at market value, or are bulk asset purchases.”). <https://www.iaao.org/media/standards/StandardValuationPersonalProperty.pdf>.

Here, Prime Properties offered to sell the subject property to Triton for a stated price. The price was non-negotiable. The property was not offered for sale on the open market. The record is clear that Triton felt compelled to purchase the property for the stated price. Failure to purchase the property would have resulted in the loss of a significant portion of Triton's business, which, in turn, would have resulted in Triton's bankruptcy.... Under these circumstances, we reject the BTA's conclusions that Lakeside's acquisition of the property was an arm's-length transaction and that the \$1.2 million purchase price was representative of true value.

Id. at 919-20.

[¶67] Similar to Spire's acquisition in this case, in *In re Phoenix Ltd. Partnership of Raleigh*, 517 S.E.2d 903 (Ct. App. N.C. 1999), the purchaser of a building in bankruptcy argued to the state's tax commission that the purchase price should set the building's taxable value. *Id.* at 906. The reviewing Court noted the circumstances surrounding the building's urgent sale in bankruptcy and concluded substantial evidence supported the commission's finding that the sale was not arm's length:

Interest on fully secured claims was accruing at a rate of \$1,000 a day and Carolina Power and Light Company was threatening to disconnect power on the property. Time was of the essence in the sale, and the buyer was required to provide full consideration entirely in cash. ... While we need not reach the question of whether a sale in a Chapter 11 bankruptcy proceeding is ever an arm's length transaction, it seems clear to us under the facts and circumstances of this transaction that this sale was not between a willing buyer and a willing seller as contemplated by the statute and therefore was not indicative of the property's true value.

Id. at 906-07.¹⁹

[¶68] In the present case, we note Assessor's practice of disqualifying bankruptcy acquisitions from consideration as a matter of practice, believing that the law forbids application of these transactions. *Supra* ¶ 32. Assessor's appraisal consultant, by contrast, considers them but disregarded Spire's acquisition of Ryckman Creek. *Supra* ¶ 36. We disagree with Assessor that the acquisition of property in a bankruptcy proceedings must necessarily be rejected as a matter of practice or law. We find no hard-and-fast doctrinal, statutory, regulatory, or case authority supporting absolute preclusion.

[¶69] However, substantial evidence supports the County Board's agreement with Assessor's rejection of the Spire acquisition as a valuation reference in this case. Ms. Luce

¹⁹ *But see Lake Cty. Assessor v. U.S. Steel Corp.*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009)(held that tax board appropriately considered bankruptcy sales of steel plants as comparable transactions given extensive evidence in record of the depressed steel market and frequent sales of similar properties in bankruptcy generally).

testified in some detail concerning the dire straits facing Ryckman Creek as a debtor in bankruptcy throughout 2017. Having unsuccessfully sought interested buyers of the business for some time, Ryckman Creek's financier solicited twelfth hour purchase bids from three potential purchasers. *Supra* ¶¶ 9-11. The business would discontinue permanently, Ms. Luce revealed, if a purchaser did not step forward by the end of 2017—merely days after execution of the Spire purchase. *Id.* The effort to find a buyer, she testified, was the lender's final effort before writing off the debt and walking away from its investment. (Tr. 36). That Ryckman Creek was financially compelled to sell and to accept the price offered is undeniable. Substantial evidence supports the County Board's agreement with Assessor's refusal to use the price Spire paid to acquire Ryckman Creek. *Supra* ¶¶ 41, 46.

[¶70] Spire cites no direct authority for the proposition that a price paid for a business in bankruptcy should, or even may, serve as the foundation for valuing that business's physical assets. Spire instead cites *Thunder Basin Coal Co. v. Campbell County*, 2006 WY 44, 132 P.3d 801 (Wyo. 2006), and this Board's application of that case in two recent tax appeals. (Spire Br. 29-38). See *In re Carbon Creek Energy, LLC*, 2018 WL 3978750, Docket No. 2017-50 (Wyo. State Bd. of Equalization Aug. 8, 2018) and *In re Campbell Cty. Assessor*, 2018 WL 3978749, Docket No. 2017-48 & 2017-49 (Wyo. State Bd. of Equalization Aug. 8, 2018).

[¶71] Spire would extend *Thunder Basin* and this Board's rulings beyond their logical reach. *Thunder Basin* stands for the unremarkable proposition that the arm's length sale of used property in the open market is arguably the best evidence of the property's fair market value, and a proper starting point for application of the cost valuation method. *Id.* at ¶ 24, 132 P.3d at 809 (citing *Jim Paws Inc. v. Equalization Bd. of Garland Cty., Ark.*, 710 S.W.2d 197 (Ark. 1986)). Important to our discussion here, the Court did not announce that such a sale necessarily establishes value. *Id.* Nor did that case involve a buyer or seller under any hint of compulsion. Reconciling *Thunder Basin* with an assessor's authority and discretion under departmental appraisal rules, we explained in *Carbon Creek* that assessors retain broad discretion to examine, and if reasonable, to reject the sale price of property in valuing that property. *Carbon Creek Energy, supra*, *19, ¶ 67.

[¶72] As the County Board held, Assessor reasonably concluded that Spire's purchase of Ryckman Creek in bankruptcy did not satisfy statutory and regulatory definitions of "fair market value." *Supra* ¶¶ 41, 55, 69. The Wyoming Supreme Court's *Thunder Basin* ruling did not require that Assessor consider or use the sale of Ryckman Creek as a reference or starting point to value that entity's facilities.

2. *Did the County Board err when it refused to consider a Delaware Bankruptcy Court's decision, to the extent the bankruptcy court addressed and discussed the properties' fair market value?*

[¶73] Spire argues the County Board denied it constitutional due process and statutory rights when the County Board disregarded the Delaware Bankruptcy Court's decision and

did not allow Spire an opportunity to brief the ruling's relevance at the end of the contested case hearing. (Spire Br. 23, 25); *supra* ¶ 40. Spire directs our attention to language in the statutory appeal process: "The taxpayer may present any evidence that is relevant, material or not repetitious, including expert witness testimony, to rebut the presumption in favor of a valuation asserted by the county assessor." Wyo. Stat. Ann. § 39-13-103(b)(i) (2017); (Spire Br. 24). The County Board's error, Spire contends, requires that we reverse. (Spire Br. 28).

[¶74] We disagree. The fallacy of Spire's claim is apparent when the appeal process is carefully considered:

(b) Appeals. The following shall apply:

(i) Any person wishing to contest an assessment of his property shall file not later than thirty (30) days after the date of the assessment schedule properly sent pursuant to W.S. 39-13-103(b)(vii), a statement with the county assessor specifying the reasons why the assessment is incorrect. The county assessor shall provide a copy to the county clerk as clerk of the county board of equalization. The county assessor and the person contesting the assessment, or his agent, shall disclose witnesses and exchange information, evidence and documents relevant to the appeal, including sales information from relevant statements of consideration if requested, no later than thirty (30) days prior to the scheduled county board of equalization hearing. The assessor shall specifically identify the sales information used to determine market value of the property under appeal. A county board of equalization may receive evidence relative to any assessment and may require the person assessed or his agent or attorney to appear before it, be examined and produce any documents relating to the assessment. The appeal may be dismissed if any person willfully neglects or refuses to attend a meeting of a county board of equalization and be examined or answer any material question upon the board's request. The state board of equalization shall adopt rules to be followed by any county board of equalization when conducting appeals under this subsection. All hearings shall be conducted in accordance with the rules adopted by the state board of equalization. Each hearing shall be recorded electronically or by a court reporter or a qualified stenographer or transcriptionist. **The taxpayer may present any evidence that is relevant, material or not repetitious, including expert opinion testimony, to rebut the presumption in favor of a valuation asserted by the county assessor.** The county attorney or his designee may represent the county board or the assessor, but not both. The assessor may be represented by an attorney and the board may hire a hearing officer. All deliberations of the board shall be in public. The county board of equalization may affirm the assessor's valuation or find in favor of the taxpayer and remand the case back to the assessor. The board shall make specific written findings and

conclusions as to the evidence presented not later than October 1 of each year[.]

Wyo. Stat. Ann. § 39-13-109(b)(i) (2017) (emphasis added). We construe statutes *in pari materia* and when ascertaining their meaning, consider their purpose in light of related statutes. *Travelocity.com LP v. Wyo. Dep't of Revenue*, 2014 WY 43, ¶ 20, 329 P.3d 131, 139 (Wyo. 2014) (quoting *Redco Const. v. Profile Props., LLC*, 2012 WY 24, ¶ 26, 271 P.3d 408, 415-16 (Wyo. 2012)). “We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence[.]” *Id.*

[¶75] Reconciling this language with other property tax processes and mandates, as we must, the entire valuation process logically presumes communication between assessors and taxpayers, as well as an assessor’s access to all information necessary to appraise. *See* Wyo. Stat. Ann. §§ 39-13-107, 18-3-204(a)(ii) through (v) (2017) (requiring submission of tax returns, reports, and authority to value using best information available; broad responsibility to collect and examine property transaction data). Simply put, the timing of events—in particular the bankruptcy proceedings and the bankruptcy court’s ruling on the day of trial—undercuts Spire’s entire due process violation argument.

[¶76] Critical to understanding the process is a recognition that the County Board was limited to review of evidence either challenging or supporting the *Assessor’s* valuation decision as to the property’s value on January 1, 2018 (for the 2017 calendar year). The County Board did not sit as a valuation authority that might entertain new information for the purpose of arriving at a different or improved value. Indeed, courts are to “presume that officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations and other directives that have passed public scrutiny[.]” *Britt*, ¶ 22, 126 P.3d at 125, (quoting *Amoco Prod. Co. v. Dep't of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). That is, the County Board reviewed the assessment from the perspective of what the *Assessor* could have known at the time of assessment on April 20, 2018, or her review immediately thereafter. (Assessor Ex. K, 027). If we accept Spire’s argument, we essentially suggest county boards of equalization may “update” assessments with new information offered at hearing, in this instance another court’s reaction to different evidence offered in that other court for a different reason, the reorganization of a bankrupt company.

[¶77] That the County Board is limited to the assessment and information available to Assessor is also necessarily inferred from the second to last sentence in the statutory process: “The county board of equalization may affirm the assessor’s valuation or find in favor of the taxpayer and remand the case back to the assessor.” *Supra* ¶ 74. County boards of equalization may not usurp an assessor’s authority and/or value property through the adjudicative process. *In re Carbon Creek Energy*, 2018 WL 3978750, *27-28, ¶¶ 106-09; *see also* Wyo. Stat. Ann. § 39-13-102(d) (2017) (“The county board of equalization has no power to and shall not set tax policy nor engage in any administrative duties

concerning assessments which are delegated to the board, the department or the county assessor.”)

[¶78] Accordingly, Spire’s argument works only if it could demonstrate that Assessor legally erred when she failed to consider the Delaware Bankruptcy Court’s decision as part of her valuation process. Due to the timing of that bankruptcy court ruling, this was an impossibility. Were we to accept Spire’s due process claim, we would effectively expand the County Board’s role under Wyoming Statutes section 39-13-109(b)(i) (2017). We would also undermine the presumption that assessments are correct and lessen the burden of proof placed on aggrieved taxpayers. *Supra* ¶¶ 49-51.

[¶79] While we may end the discussion there, we next consider Spire’s claim from an evidentiary standpoint and decide whether the County Board erred as a matter of law when it determined that the Delaware Bankruptcy Court’s findings were not sufficiently relevant. *Supra* ¶ 40. Generally speaking, administrative bodies acting in a judicial capacity are not bound by technical rules of evidence that govern trials by courts. *In re Greene*, 2009 WY 42, ¶ 27, 204 P.3d 285, 294 (Wyo. 2009) (citing *Griffin v. State ex rel. Dep’t of Transp.*, 2002 WY 82, ¶ 11, 47 P.3d 194, 197 (Wyo. 2002)). “Rulings on the admission of evidence are within the sound discretion of the agency as the trier of fact; we will set aside an evidentiary determination only if the agency abused its discretion.” *Id.* at ¶ 9, 204 P.3d at 290. A hearing body abuses its discretion when its “decision shocks the conscience of the court and appears to be so unfair and inequitable that a reasonable person could not abide by it.” *Watkins v. State ex rel. Wyo. Med. Comm’n*, 2011 WY 49, ¶ 21, 250 P.3d 1082, 1098 (Wyo. 2011) (quoting *Goddard v. Colonel Bozeman’s Rest.*, 914 P.2d 1233, 1238 (Wyo. 1996)).

[¶80] The evidentiary standard applicable to county boards of equalization is that they shall consider “[a]ll evidence, including expert testimony, which is not irrelevant, immaterial or unduly repetitious[.]” Rules, Wyo. Bd. of Equalization, Ch. 7 § 17 (2015); *see also* Wyo. Stat. Ann. § 39-13-109(b)(i) (2017). Wyoming Statutes section 16-3-108 (2017), of the Wyoming Administrative Procedure Act, defines relevant evidence as “the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs.” *See* Rules, Wyo. Bd. of Equalization, Ch. 7 § 17 (2015) (“W.S. 16-3-108 generally sets forth the rules of evidence which shall be followed by the county board.”)

[¶81] For the same reasons Spire could not expect the County Board to consider the Delaware Bankruptcy Court’s findings as a matter of procedural right, the County Board reasonably doubted the relevancy of that court’s ruling in adjudicating whether Assessor erred in her valuation months before. The Bankruptcy Court’s references to the value of property also at issue in proceedings before the County Board²⁰ were not germane to

²⁰ We note that the Delaware Bankruptcy court discussed the sale process and market value of the debtor, Ryckman Creek, only in passing. *In re Ryckman Creek Res., LLC, et al.*, 2018 WL 4178692 Case No. 16-10292, *7-8 (U.S.B.C. Del., Aug. 29, 2018); R. at Tab 29, 7-8. The parties to the bankruptcy case did not directly question whether the company had been valued at fair market value. Rather, they presented contract interpretational disputes and sought clarification of contract rights and obligations under the plan going

whether the Assessor, along with her consulting appraiser, acted within their appraisal judgment in deciding not to rely upon a distress sale in bankruptcy.

[¶82] Moreover, had the County Board agreed to consider the bankruptcy court ruling and proceedings, the parties might have been entitled to an opportunity to compare the proceedings and the evidence received in each. Wyo. Stat. Ann. § 16-3-108(c) (2017) (“A party may conduct cross-examinations required for a full and true disclosure of the facts and a party is entitled to confront all opposing witnesses.”).²¹ Improperly denying an opportunity to cross examine is reversible error under Wyoming Statutes section 16-3-114(c) (2017). *Majority of Working Interest Owners in Buck Draw Field Area v. Wyo. Oil and Gas Conservation Comm’n*, 721 P.2d 1070, 1076 (Wyo. 1986) (examining whether party had fair opportunity to access and consider proceedings outside of the contested case hearing). As explained, because the Bankruptcy Court issued its ruling long after the Assessor’s valuation, Assessor may have argued its irrelevance to whether Assessor erred in her valuation months earlier.

[¶83] The County Board correctly refused to consider the Delaware Bankruptcy Court’s ruling because it was irrelevant to whether Assessor correctly valued the Ryckman Creek facilities months earlier.

3. Does substantial evidence support the County Board decision to prefer the Assessor’s valuation over the valuation offered by Spire’s hired appraiser?

[¶84] The evidence presented in support of, and in opposition to, Spire’s and Assessor’s respective valuations reveal serious concerns as to each valuation’s validity. Citing several serious concerns with Spire’s valuation at \$26.19 million, we find that substantial evidence supported the County’s Board’s disagreement with Spire’s valuation.

[¶85] However, we also conclude that Spire carried its burden of overcoming the presumption in favor of Assessor’s valuation, and it offered sufficient evidence that the assessed valuation likely did not comply with departmental valuation guidelines. Indeed, the record contains almost no evidence sustaining Assessor’s valuation, and Assessor’s consulting appraiser, Mr. Lehn, would not testify to its accuracy. *Supra* ¶¶ 38-39. Therefore, we find the County Board’s affirmation lacked substantial evidence and remand

forward. *Id.* at * 1, 3-7. Thus, the bankruptcy court was not asked to decide whether Spire offered a fair market value for Ryckman Creek, much less specific equipment at issue in this appeal. The court reviewed the parties’ stipulation about market value in its articulation of the dispute and arguments among the parties. *Id.* at *7-8. For this reason as well, even assuming the ruling was relevant, its probative evidentiary value in proving or contesting outcomes before the County Board is highly questionable.

²¹ “As a general proposition, it is not proper for an administrative authority to base a decision of adjudicatory nature, or findings in support thereof, upon evidence or information outside of the record, and in particular upon evidence obtained without the presence of and notice to the interested parties, and not made known to them prior to the decision.” E.H. Schopler, Annotation, *Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel*, 18 A.L.R.2d 552, Art. 3[a] (1951 & Supp. 2019).

this matter to Assessor for a new valuation performed in accordance with statutory and regulatory guidelines.

i. Substantial evidence supported the County Board's rejection of Spire's proffered valuation at \$26.19 million.

[¶86] Several components of Spire's valuation (authored by its consultant appraiser, K.E. Andrews) were not adequately explained. First, implicit in the County Board's discomfort with the Spire valuation was K.E. Andrew's apparent effort to reach a value on par with the bankruptcy sale of \$26 million, which K.E. Andrews referenced in its March 29, 2018, rendition submitted to Assessor. *Supra* ¶¶ 18-20; (Ex. T-1, Spire 0001-7; R. at Tab 34, 7-8). Reviewing that rendition, K.E. Andrews' unexplained 84.5% obsolescence reduction of the \$168 million RCNLD raised legitimate questions about the \$26 million valuation's components. *Id.*

[¶87] Spire's rendition proved prophetic. K.E. Andrews' subsequent valuation of the Ryckman Creek facilities arrived at nearly the same value, \$26.19 million. *Supra* ¶¶ 21-28. K.E. Andrews' independent valuation relied on two methods, the cost approach and market (or sales comparison) approach, the results of which were averaged. *Id.*

[¶88] The County Board found discrepancies with K.E. Andrews' application of the market approach, in particular the age of the comparable transactions. (R. at Tab. 34, p. 8-9); *supra* ¶¶ 42-43. While the County Board's analysis on this point is rather cursory, we agree that K.E. Andrews' explanation of the market approach raised several unanswered questions and concerns. The Department's guidance concerning application of the sales comparison method directs that appraisers must adjust for property characteristics and other factors. *Supra* ¶ 56. Assessor's consulting appraiser, Mr. Lehn, testified to a host of property characteristic differences that Mr. Kistler did not account for.²² *Supra* ¶ 33.

[¶89] In particular, Mr. Lehn testified that application of the market approach to complex properties, such as those at issue, is highly unusual and problematic because of differences in the properties compared, different pipelines and markets associated with each facility's location, the fact that the two comparable sales were not bankruptcy sales, and other features specific to conveyance of each facility. *Id.*; (Tr. 212, 215-18, 232-34). Without an adjustment or allowance to account for differences, Mr. Lehn explained, the market

²² The Department of Revenue's rules of appraisal practice for special purpose property direct that "appraisers may use any credible source to establish costs or sales or [sic] personal property, including, but not limited to 'blue book' on boats, airplanes, farm and construction equipment, Marshall and Swift Valuation Service and information developed by the Division." Rules, Wyo. Dep't of Revenue, ch. 9, § 5(c)(i)(C) (2016). The Department's 2018 Personal Property Valuation Manual directs that when applying the sales comparison approach, "[a]djustments are always made to the sales price of the comparable and never the subject property. The proper order of adjustments is 1) Financing and 2) Time of sale. Then other adjustments may be applied (and not in any particular order) such as quality, condition, location, age, size, and other characteristics." Wyo. Dep't of Revenue Personal Property Valuation Manual, § 6.3 (2018).

method is unreliable. Substantial evidence supports the County Board's discomfort with K.E. Andrew's market valuation analysis.

[¶90] Comparing K.E. Andrews' application of the cost valuation method with T.Y. Pickett's cost valuation, the County Board recognized that each consultant possessed valuation expertise, but it favored the T.Y. Pickett analysis. (R. at Tab 34, pp. 9, 12-13). Here again, the County Board's discussion is cursory, but we too found aspects of Mr. Kistler's cost method valuation significantly lacking.

[¶91] Most problematic, Mr. Kistler's deduction of \$100 million from the RCNLD as functional obsolescence lacked evidentiary credibility or verification of any type. Mr. Kistler testified (and stated in his Appraisal Report) that an unidentified individual with the bankruptcy estate estimated a cost of \$100 million to return the Ryckman Creek facilities to their intended capacity.²³ *Supra* ¶ 26. While that estimate may be correct or even low, the County Board reasonably rejected this unverified and unexplained figure that Spire conveyed to Mr. Kistler in support of a deduction greater than one half of the properties' cost to replace new.

[¶92] Speaking to this issue generally, Mr. Lehn admitted that he had not fully considered the cost to return Ryckman Creek facilities to their full capacity and was only generally aware of some of the operational difficulties established in evidence. *Supra* ¶¶ 13-15, 37. Still, if the County Board harbored reservations about the \$100 million functional obsolescence estimate, along with other informational sources supporting K.E. Andrews' obsolescence deductions, sufficient evidence fueled those reservations. Accordingly, this Board cannot fault the County Board as it was solely responsible for weighing the evidence and for determining the credibility of witnesses. *In re Worker's Comp. Claim of Johnson*, 2001 WY 48, ¶7, 23 P.3d 32, 35, ¶ 7 (Wyo. 2001).

[¶93] Substantial evidence supported the County Board's rejection of the Spire valuation of \$26.19 million. This evidence included the County Board's inability to reconcile (or distinguish) Spire's purchase of less than 100% of Ryckman Creek's equity as a business entity, with the value of the equipment alone, which the evidence before the County Board did not parse. The County Board also reasonably struggled with critical aspects of Mr. Kistler's cost method valuation.

ii. Substantial evidence did not support the County Board's affirmation of Assessor's valuation of Ryckman Creek at \$91,680,440.

[¶94] It seems axiomatic that if a taxpayer does not offer sufficient evidence to sustain the valuation it presents to challenge an assessed value, the county board of equalization must affirm the assessed value in accordance with the presumption favoring an assessor's values.

²³ As Spire points out, the County Board did not identify specific aspects of Mr. Kister's cost method appraisal work when it rejected his valuation, generalizing that it found Mr. Lehn's work more credible. (Spire Br. 44-46); *supra* ¶ 43. Mr. Kister's reliance on an unidentified source's estimate of \$100 million to repair the facilities, however, was key in Assessor's opposition to Mr. Kistler's cost valuation conclusion and played a critical role in the County Board's decision. *Id.*

Supra ¶¶ 49-51. We have in this appeal, however, a most unusual evidentiary development: the consulting appraiser responsible for valuation of Ryckman Creek largely disavowed knowledge of the valuation's basis. *Supra* ¶¶ 39-40. Neither did the Assessor testify regarding the valuation's preparation, other than to say that T.Y. Pickett valued the property. *Supra* ¶¶ 30-32. Indeed, the consulting appraiser who performed the appraisal of Ryckman Creek, Mr. Lehn, did not fully value the Ryckman Creek facilities and implied that the valuation is incorrect and should have been closer to his previous year's valuation of \$157 million. *Supra* ¶ 38.

[¶95] From the record, we know almost nothing about the 2018 assessed valuation's calculation. Mr. Lehn testified that Assessor's settlement of 2017's taxable value at \$90 million formed the basis for 2018's valuation. *Supra* ¶¶ 38-39. Not a single document or other evidence informed the County Board about the settlement negotiations. Mr. Lehn testified that Assessor and previous owners, likely the debtor-in-bankruptcy²⁴, settled on a \$90 million taxable value for 2017. *Id.* For the 2018 valuation, Assessor instructed Mr. Lehn to use that \$90 million value as the starting point, after which he modified it to account for additional property and other adjustments. *Id.* Mr. Lehn testified that he believed the true fair market value to be closer to his appraised value of approximately \$157 million. *Id.*

[¶96] In Wyoming, assessors must value properties as of January 1 of each year. *See* Wyo. Stat. Ann. §§ 39-13-103(b)(i)(A) (2017). When valuing properties, Assessors are required to follow Wyoming's statutes and the Department of Revenue's valuation rules and directives, as well as the State Board's guidance. *Supra* ¶ 54. This ensures fair market valuations as defined by statute, and uniformity across all property classifications.

[¶97] As a matter of case law, the County Board and this Board presume assessors have followed Wyoming law and exercised good faith in the execution of all responsibilities. *Supra* ¶¶ 50-51. Accordingly, the County Board was to presume Assessor correctly applied departmental guidelines in assessing the Ryckman Creek facilities until sufficient proof to the contrary was received. *Id.*

[¶98] Assessor's reliance on the previous year's settlement to value Ryckman Creek in 2018, without explanation of how that settled valuation was reached or how the valuation was conceived, severely tests the presumption we are to apply. That presumption is eviscerated by Mr. Lehn's testimony that the valuation is not likely correct, or that he was entirely unaware of how the settling parties arrived at the \$90 million base value. *Supra* ¶¶ 38-39.

[¶99] Although Spire did not adequately demonstrate the propriety of its proffered value, it offered sufficient evidence that the assessed value is likely incorrect or does not comport

²⁴ The record does not identify the parties to the settlement or afford insight to the bankruptcy court's role, except to say that the court approved the settlement. *Supra* ¶ 38. We know of the \$90 million settlement figure only through Mr. Lehn's testimony and Appraisal Report. Assessor did not officially change the 2017 assessment to reflect the settled \$90 million value. *Supra* ¶ 31.

with departmental valuation guidelines. We must, therefore, reverse the County Board's decision affirming the assessed valuation and remand for a new valuation.

CONCLUSION

[¶100] The County Board correctly affirmed Assessor's decision to disregard Spire's acquisition of the Ryckman Creek business entity in bankruptcy. Assessor acted well within her statutory, regulatory, and appraisal discretion in so doing.

[¶101] The County Board's refusal to consider a Delaware Bankruptcy Court's ruling that obliquely referred to Ryckman Creek's market value, did not violate Spire's due process rights. The County Board acted well within its discretion: it correctly determined that the ruling was irrelevant to whether Assessor correctly valued the Ryckman Creek facilities months earlier.

[¶102] The County Board correctly applied Wyoming tax law when it rejected Spire's proffered valuation of Ryckman Creek, and substantial evidence supported that rejection. However, substantial evidence did not support the County Board's decision affirming Assessor's assessed valuation. Spire offered substantial evidence that Assessor did not prepare the 2018 assessment in accordance with Wyoming law. We, therefore, must remand to Assessor for a new valuation.

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ORDER

[¶103] **IT IS HEREBY ORDERED** that the Uinta County Board of Equalization decision rejecting Spire Storage West, LLC's submitted valuation of the Ryckman Creek facilities is **affirmed**.

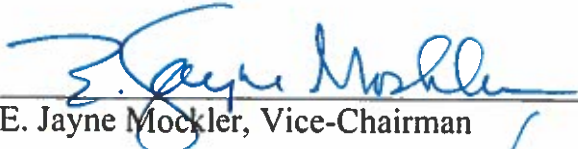
[¶104] **IT IS FURTHER ORDERED** that the Uinta County Board of Equalization decision affirming the Uinta County Assessor's assessment is **reversed**, and we **remand** this matter to Assessor for a new valuation and assessment.

DATED this 5th day of August 2019.

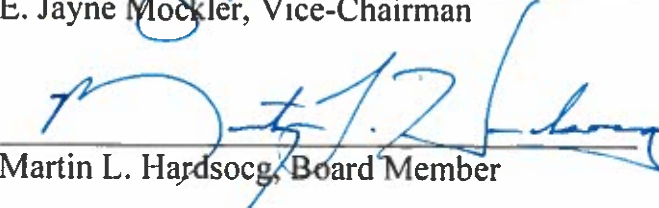
STATE BOARD OF EQUALIZATION



David Delicath, Chairman



E. Jayne Mockler, Vice-Chairman



Martin L. Hardsocg, Board Member

ATTEST:



Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 10th day of August 2019, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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