BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
NAVAJO REFINING CO., L.P. **No. 05-08 (CAB)**
CAB ID NO. 410.018
TO 2004 NOTICE OF VALUATION

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on January 19, 2005, before Margaret B. Alcock, Hearing Officer. The Property Tax Division ("PTD") of the Taxation and Revenue Department ("Department") was represented by Bridget A. Jacober, Special Assistant Attorney General. Navajo Refining Co., L.P. ("Navajo") was represented by Joel M. Carson, II, with the law firm Losee, Carson & Haas, P.A. At the end of the hearing, the parties agreed to allow the hearing officer 45 days after submission of post-hearing briefs to issue a decision in this matter. The parties' briefs were submitted on March 14, 2005. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

The Artesia/Lovington Refinery

1. Navajo, a wholly-owned subsidiary of Holly Corporation, reports properties in eight counties in New Mexico for property tax purposes, including an oil refinery complex located in Eddy and Lea Counties. (Prehearing Statement; Exhibit D, Holly's 2003 Annual Report, p. 5).

2. Navajo's refinery in Eddy County is located on a 400-acre site in Artesia and has fully integrated crude distillation, fluid catalytic cracking, vacuum distillation, alkylation,

hydrodesulfurization, isomerization, sulfur recovery and reforming units, and approximately 1.6 million barrels of feedstock and product tank storage, as well as other supporting units and office buildings at the site. (Exhibit D, Holly's 2003 Annual Report, p. 8).

3. Since 1991, the Artesia refinery has been operated in conjunction with integrated refining facilities located in Lovington, Lea County, New Mexico, approximately 65 miles east of Artesia. (Exhibit C, Holly's 1991 Annual Report, pp. 3-4).

4. The Lovington refinery consists of a crude and vacuum distillation unit along with approximately one million barrels of feedstock and product tank storage. (Exhibit D, Holly's 2003 Annual Report, p. 8).

5. The Lovington refinery lacks the ability to produce the type of high-value light products (such as gasoline, diesel fuel and jet fuel) that comprise 90% of Navajo's output. For this reason, the Lovington facility is used to process crude oil into intermediate products, which are then transported by means of a company pipeline to the Artesia facility to be upgraded into the finished products. (Prehearing Statement; Exhibit D, Holly's 2003 Annual Report, pp. 7-8).

6. Navajo acquired the Lovington facility (which had been inactive since 1984) in 1989 and began to explore the possibility of using that facility in conjunction with its Artesia refinery to expand Navajo's New Mexico refining capacity. (Exhibit C, Holly's 1989 Annual Report, p. 3).

7. When it made the decision to reactivate the Lovington refinery and maintain crude units at two locations, rather than expanding its existing refinery in Artesia, Navajo considered the following factors (Exhibit C, 9/9/04 letter from Stephen Gardner to Steven Long):

(a) The Lovington refinery had numerous county, state, and federal operating permits already in place. Relocation of the crude unit assets from Lovington to Artesia would have required Navajo to apply for new and additional permits, which would have entailed additional expense and a prolonged administrative review process.

(b) Reactivating the Lovington refinery allowed Navajo to expand its refining capacity quickly enough to secure pipeline space to Arizona ahead of its El Paso competition, which was also in the process of expanding.

(c) The Lovington facility had injection wells to dispose of waste water while the Artesia facility used evaporation ponds that could not be expanded to handle the additional capacity that would have occurred had the Lovington operation been moved to Artesia.

(d) The Lovington facility offered a large amount of offsite tankage. The cost of moving this tankage to Artesia, as well as the additional utility and substation connection costs, suggested that reactivating the Lovington refinery was a better economic decision than expanding Navajo's existing refinery at Artesia.

8. Navajo also considered the community of Lovington's desire to have the refinery reopened to provide jobs for its citizens and to increase its tax base. (Testimony of Steven Long ("SL")).

9. The factors that Navajo considered in deciding to reactivate the Lovington refinery, rather than expanding its existing refinery in Artesia, still exist at the present time (Testimony of SL), *i.e.*:

(a) It is even more difficult to get permits today than it was in 1989.

(b) The current competition for pipeline space is comparable to what it was in 1989.

(c) The Artesia waste water system cannot be physically expanded to take on more capacity without total new capital investment.

(d) It would be more expensive to move the Lovington tankage to Artesia today than it would have been in 1989.

10. The reactivation of the Lovington refinery, together with improvements to the Artesia refinery, allowed Navajo to increase its refining capacity from 40,000 barrels per day to 60,000 barrels per day by the end of 1991. (Exhibit C, Holly's 1991 Annual Report, p. 3).

Environmental Regulations

11. Refineries are subject to various environmental regulations, including the California Air Resources Board ("CARB") standards, which were also adopted in Navajo's Phoenix market for winter months beginning in late 2000. (Exhibit D, Holly's 2003 Annual Report, p. 13).

12. In 2000, the Environmental Protection Agency ("EPA") enacted new regulations under the Clean Air Act requiring all gasoline and diesel fuel to be reformulated to reduce sulfur content. (Exhibit 5, Appendix II, Fitch Ratings, *What a Smell of Sulfur*; Testimony of SL).

13. The new EPA standards applied nationwide and required refineries to make a significant investment of capital to meet the new requirements. (Exhibit 5, Appendix II, Fitch Ratings, *What a Smell of Sulfur*; Testimony of SL).

14. The principal method for reducing sulfur is through hydrotreating, and new hydrotreating units represent the bulk of the major investments refiners need to make to meet

new EPA standards. (Exhibit 5, Appendix II, Fitch Ratings, *What a Smell of Sulfur*; Testimony of SL).

15. Some less competitive refiners have decided to shut down their facilities rather than incur the costs necessary to comply with the new EPA standards. (Exhibit 5, Appendix II, Fitch Ratings, *What a Smell of Sulfur*; Testimony of SL).

16. The refiners that remain in business will ultimately benefit from the new regulations as refined product supply is removed from the market and at least a portion of the capital costs required to comply with the new standards is passed along to the end consumers. (Exhibit 5, Appendix II, Fitch Ratings, *What a Smell of Sulfur*).

Navajo's Response to New EPA Standards

17. Navajo did not shut down its refinery in response to the new EPA standards, but elected to make substantial capital improvements designed to comply with those standards and increase the capacity of its Artesia/Lovington refinery. (Exhibit 3, Appendix II, 1/8/02 press release; Exhibits C and D, Holly's Annual Reports).

18. In January 2002, Holly announced that Navajo had received the necessary permits for the construction of a new gas oil hydrotreating unit at its Artesia refinery, stating that:

> The Gas Oil Hydrotreating Unit will enable Navajo to expand substantially its capabilities to produce higher-valued California grade gasolines required in its Phoenix market while increasing Navajo's overall percentage yield of gasoline. Navajo will also be positioned to meet the new EPA nationwide low-sulfur clean-burning gasoline standards on all its gasoline production upon the completion of the Gas Oil Hydrotreater in late 2003, which would be over four years ahead of the required date for the Navajo facility.

(Exhibit 3, Appendix II, 1/8/02 press release).

19. Holly's January 2002 press release further stated that Navajo was planning to make additional improvements to expand its New Mexico refining capacity from 60,000 to 70,000 barrels per day. (Exhibit 3, Appendix II, 1/8/02 press release).

20. In its 2003 annual report, Holly informed its stockholders that construction of the gas oil hydrotreating unit at Navajo's refinery had been completed, "which will satisfy future EPA-mandated gasoline specifications while improving the refinery's yield and production of higher value products." (Exhibit D, Holly's 2003 Annual Report, "Dear Fellow Stockholders").

21. Additional improvements increased Navajo's refining capacity from 60,000 to 75,000 barrels per day. (Exhibit D, Holly's 2003 Annual Report, "Dear Fellow Stockholders").

22. With the 2003 expansion and upgrade of its refinery, Navajo now has the ability to process a variety of sour crude oils into high value light products. This, in turn, allows management to vary the crude supply mix to take advantage of changes in raw material prices and to respond to fluctuations in the availability of different types of crude oil supplies. (Exhibit D, Holly's 2003 Annual Report, p. 7).

23. During 2003, Navajo's refinery was running at close to full capacity and Navajo was selling all of the products it produced. Navajo's net sales and net cash operating margin increased substantially between 2002 and 2003. (Exhibit D, Holly's Annual Report, p. 8; Testimony of SL).

24. The capital improvements made at the Navajo refinery, together with Holly's ongoing strategy of targeting high value products in premium locations, has given the company a strong strategic and geographic advantage over its competitors. (Exhibit D, Holly's 2003 Annual Report, "Dear Fellow Stockholders").

Navajo's Claims of Economic and Functional Obsolescence for the 2001, 2002, and 2003 Tax Years

25. In March 2001, Navajo filed its 2001 annual property report with the Property Tax Division ("PTD") of the New Mexico Taxation and Revenue Department. (Exhibit 2).

26. Navajo's 2001 property report was prepared under the direction of Steven W. Long, III, managing partner of Industrial Valuation Services, L.L.C, which was hired by Navajo to evaluate various factors that might affect the taxable value of Navajo's Artesia/Lovington refinery. (Exhibit 2; Testimony of SL).

27. Navajo's 2001 property report included a claim of functional and economic obsolescence for its Artesia/Lovington refinery. The justification for Navajo's claim was set out in Navajo's March 29, 2001 cover letter to Tom Garcia, Jr., the PTD Director. (Exhibit 2).

28. PTD initially denied Navajo's obsolescence claim for the 2001 tax year. Navajo protested PTD's denial, and the parties began an 18-month period of negotiation concerning the obsolescence issue. (Testimony of SL).

29. The representatives participating in the negotiations were: Steven Long on behalf of Navajo; and Richard Martinez, chief of the State Assessed Property Bureau, on behalf of PTD. After Mr. Martinez's retirement, Navajo worked with Tom Garcia, Jr., the PTD director. (Testimony of SL; hearing officer's 3/23/05 letter to the parties).

30. After protracted negotiations, Navajo and PTD reached a compromise methodology for calculating a deduction for functional and economic obsolescence in connection with the Artesia/Lovington refinery. (Testimony of SL).

31. The compromise methodology agreed to by Navajo and PTD did not conform to the Uniform Standards of Professional Appraisal Practice ("USPAP"). (Testimony of SL).

32. PTD agreed to allow a deduction for functional obsolescence based on the 65-mile distance between the Artesia and Lovington facilities and agreed to allow a deduction for economic obsolescence based on the additional capital investment required to comply with environmental standards. PTD rejected the other bases for Navajo's obsolescence claim as set out in Navajo's 2001 property report. (Testimony of SL).

33. PTD required Navajo to allocate the entire amount of obsolescence allowed on the Artesia/Lovington refinery to Eddy County because PTD was concerned that Lea County could not afford to lose any property tax revenue. (Testimony of SL).

34. The compromise methodology agreed to by the parties was used to value Navajo's Artesia/Lovington Refinery for the 2001 and 2002 tax years. (Testimony of SL).

35. In March 2003, Navajo filed its 2003 annual property report using the same methodology agreed to for the 2001 and 2002 tax years. The 2003 report was accepted as filed. (Testimony of SL).

36. After reaching agreement on the obsolescence deduction for the 2001 tax year, Navajo had asked PTD to put the agreement in writing so that it could be used for future years. PTD refused, stating that PTD regulations do not permit such agreements. (Testimony of SL).

Navajo's Claims of Economic and Functional Obsolescence for the 2004 Tax Year

37. On March 29, 2004, Navajo filed its 2004 annual property report, which included an obsolescence deduction for the Artesia/ Lovington refinery. (Exhibit 5).

38. Navajo's obsolescence deduction was not based on a complete income, market or cost approach, but was calculated using the same methodology PTD had orally agreed to in

settlement of the 2001 and 2002 tax years and had accepted for the 2003 tax year. (Exhibit 5; Testimony of SL).

39. On April 28, 2004, PTD mailed Navajo a Notice of Valuation for the 2004 tax year. (Prehearing Statement; Exhibit B).

40. After reviewing PTD's Notice of Valuation, Navajo determined that PTD had disallowed the deduction Navajo claimed for obsolescence on the Artesia/ Lovington refinery. (Testimony of SL).

41. Steven Long telephoned PTD to inquire as to the reason for the denial. Mr. Long spoke to Clifford Quintana, a tax compliance specialist, who said that he had been instructed not to grant any taxpayer requests for obsolescence, but to refer all such requests to his supervisor. (Testimony of Clifford Quintana).

Protest Proceeding

42. On May 25, 2004, Navajo protested PTD's 2004 valuation, stating that PTD "has failed to consider functional and economic obsolescence associated with the Refinery located in Eddy County" and that PTD's valuation "is arbitrary, capricious and otherwise contrary to law." [1]

43. On June 10, 2004, PTD mailed its First Set of Interrogatories and Request for Production to Navajo.

44. Navajo had informal discussions and meetings with PTD personnel concerning Navajo's claim to an obsolescence deduction for the 2004 tax year, but never asked for a written explanation as to why the deduction had been denied. (Testimony of SL).

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[1] All pleadings and correspondence referred to in this decision are contained in the hearing officer's file, which is part of the record of this proceeding.

45. On June 23, 2004, the hearing officer sent the parties a Notice of Administrative Hearing scheduling a hearing on Navajo's protest for July 19, 2004. At Navajo's request, the hearing was continued twice, first to October 7, 2004 and then to January 19, 2005.

46. On September 13, 2004, following Navajo's second request for continuance, the hearing officer entered a scheduling order granting the continuance, extending the time for Navajo to respond to the Department's discovery requests until October 15, 2004, and setting December 10, 2004 as the deadline for all additional discovery to be completed.

47. Navajo never responded to PTD's interrogatories and request for production and never served any discovery requests on PTD. (Testimony of SL).

ISSUES TO BE DECIDED

I. Whether the standard of review to be applied by the Hearing officer is a record review of PTD's valuation or a *de novo* review of the evidence and legal arguments presented by the parties at the administrative hearing.

II. Whether PTD acted arbitrarily and capriciously in rejecting Navajo's 2004 claim to an obsolescence deduction based on the same methodology accepted by PTD in prior years.

III. Whether Navajo met its statutory burden of proving and quantifying its claim to a deduction for functional obsolescence based on the split location of its Artesia/Lovington refinery and to a deduction for economic obsolescence based on the expenditures it incurred to comply with government regulations.

BURDEN OF PROOF

There is a statutory presumption that PTD's determination of value for property tax purposes is correct. NMSA 1978, § 7-38-6; *Jicarilla Apache Nation v. Rodarte*, 2004 NMSC 35

¶ 21, 103 P.3d 554. With regard to deductions from value for obsolescence, the burden is on the taxpayer to prove the amount of the deduction to which it is entitled. *Anaconda Co. v. Property Tax Department*, 94 N.M. 202, 207, 608 P.2d 514, 519 (Ct. App. 1979), *cert. denied*, 94 N.M. 628, 614 P.2d 545 (1980). Accordingly, it is Navajo's burden to establish that it is entitled to an obsolescence deduction for tax year 2004 and that PTD's denial of the deduction was incorrect.

DISCUSSION

I. Standard of Review. The first issue to be determined concerns the standard of review the hearing officer should apply to PTD's decision not to allow Navajo's obsolescence deduction. Navajo argues that the hearing officer must limit her review to the grounds stated by PTD at the time the deduction was denied. (Navajo Brief, pp. 10-12). In support of its position, Navajo cites several cases that discuss the standard that applies to judicial review of agency decisions. *See, Atlixco Coalition v. County of Bernalillo*, 1999 NMCA 88, 127 N.M. 549, 984 P.2d 796*, cert. denied*, 127 N.M. 389, 981 P.2d 1207 (1999) (judicial review of a zoning decision made by a board of county commissioners after public hearing); *Stone Landing Corp. v. Board of Appeals*, 5 A.D.3d 496, 773 N.Y.S.2d 103 (N.Y. App. Div. 2004) (judicial review of a zoning decision made by a board of appeals after hearing); *AT&T Communications v. Arkansas Public Service Commission*, 40 Ark. App. 126, 843 S.W.2d 855 (1992) (judicial review of a decision of the Arkansas Public Service Commission after a public hearing conducted by an administrative hearing officer); *Arkansas Department of Human Services v. Haen*, 81 Ark. App. 171, 100 S.W.3d 740 (2003) (judicial review of an agency decision made after a hearing conducted by an administrative law judge).

Navajo has confused the standard of review that courts apply to final agency decisions with the standard of review that administrative agencies apply to internal staff decisions. As the New Mexico Court of Appeals explained in *Atlixco Coalition v. Maggiore*, 1998 NMCA 134, ¶ 20, 125 N.M. 786, 965 P.2d 370, for the judiciary to supply a reasoned basis for an agency's action is inconsistent with the doctrine of separation of powers because it "foists upon the court what is essentially the function of the Executive Branch of government." (quoting *McGonigel's, Inc. v. Pennsylvania Liquor Control Bd*., 663 A.2d 890, 893 (Pa. Commw. Ct. 1995)). The court further noted that "the task of supplying reasons for its actions is a function of the Executive Branch because it involves matters that are within the Secretary's specialized field of expertise." *Id*. at ¶ 21. Neither the separation of powers doctrine nor the need to defer to agency expertise is a concern, however, when an administrative hearing officer reviews the decision of agency staff.

This conclusion is confirmed by the Tenth Circuit Court of Appeals' opinion in *IMC Kalium Carlsbad, Inc. v. Interior Board of Land Appeals*, 206 F.3d 1003 (10th Cir. 2000), cited at page 11 of Navajo's post-hearing brief. In *IMC*, the court reviewed a decision by the Interior Board of Land Appeals ("IBLA"), which reversed a decision of the Bureau of Land Management ("BLM"). The court noted that:

> This case hinges on two important subsidiary questions that affect our application of the standard of review: (1) when reaching its decision, what weight, if any, must the IBLA accord the findings and decision of the BLM? and (2) what weight, if any, must we accord the findings and decision of the BLM when reviewing the IBLA decision? These questions are pivotal because the district court focused on whether the decision of the BLM, rather than that of the IBLA, was supported by the evidence. [footnote omitted] Yates/Pogo contend that such an analysis impermissibly deferred to the BLM. We agree.

206 F.3d at 1009. The Tenth Circuit found that the IBLA had *de novo* review authority over BLM decisions because the IBLA was charged with deciding appeals "as fully and finally as

might the Secretary." *Id*. (citing *National Wildlife Fed'n*, 145 IBLA 348, 362 (1998)). The court specifically held that the "decision of a subordinate agency division, such as the BLM, does not bind the agency." *Id.*

The same reasoning applies here. The hearing officer's decision is not a record review of PTD's valuation, but a *de novo* review of the evidence and legal arguments presented by the parties at the administrative hearing. The hearing officer's decision, which is issued in the name of the secretary of the Taxation and Revenue Department, represents the final decision of the agency. *See*, NMSA 1978, § 7-38-23(D) and (E). It is this decision—not the initial decision of PTD—that is subject to the standard of judicial review discussed in the cases Navajo cites in its post-hearing brief.

II. Whether PTD's Denial of Navajo's Deduction Was Arbitrary and Capricious. Navajo maintains that PTD's decision to deny Navajo's obsolescence deduction was arbitrary and capricious for the following reasons: Navajo never received a written explanation of PTD's reasons for denying the deduction; the denial was not based on a review of the relevant facts, but on a blanket policy not to grant obsolescence to any taxpayer; PTD was required to accept the same method of calculating obsolescence that it had accepted in prior tax years; and PTD's denial was retroactive and prejudicial to Navajo.

A. Absence of Written Explanation. Navajo maintains that PTD was required to give Navajo "a written decision and explanation of reasons" for rejecting Navajo's deduction for obsolescence. (Navajo Brief, p. 4). The provisions of the Property Tax Code do not support Navajo's position. NMSA 1978, § 7-38-20(D) sets out the information PTD is required to include in its annual notices of valuation, and Navajo has not made any allegation that PTD's

2004 notice did not meet these statutory requirements. PTD was not required to send Navajo a separate, written decision explaining the basis for the valuation. As both parties were well aware, NMSA 1978, § 7-36-27 sets out the statutory methodology PTD used to value Navajo's Artesia/Lovington refinery. Upon receipt of PTD's April 28, 2004 notice, Navajo quickly determined that the valuation did not include a deduction for obsolescence and confirmed this with a telephone call to PTD. On May 25, 2004, Navajo filed a timely protest challenging PTD's failure to allow the deduction.

A formal administrative hearing on Navajo's protest was scheduled for July 19, 2004. At Navajo's request, the hearing was continued twice, first to October 7, 2004 and then to January 19, 2005. As justification for its second request for continuance, Navajo stated that "discussions have been ongoing between TRD and Navajo and the case is not ripe for hearing." PTD did not object to the continuance, noting that the "parties have agreed to use the date of October 7th for *another* informal conference." (Emphasis added). Given this interaction between the parties, it is difficult to accept Navajo's claim that it has been unable to obtain an explanation of PTD's reasons for denying Navajo's obsolescence deduction. At the administrative hearing, Steven Long acknowledged that he had met with various PTD employees, including PTD's director and attorney, but had never asked for a written explanation of their position on Navajo's protest.

NMSA 1978, § 7-38-23(A) provides that the Rules of Civil Procedure for the District Courts govern the course of discovery in administrative property tax hearings. On June 10, 2004, shortly after Navajo's protest was filed, PTD served its First Set of Interrogatories and Request for Production on Navajo. Three months later, on September 9, 2004, Navajo filed a motion asking for an extension of time to respond to PTD's interrogatories. The hearing officer

subsequently entered a scheduling order extending Navajo's response time to October 15, 2004 and setting December 10, 2004 as the deadline for all additional discovery to be completed. As of January 19, 2005, the date of the administrative hearing, Navajo still had not responded to PTD's interrogatories,[2] nor had Navajo served any discovery requests on PTD.

On January 5, 2005, the parties filed a Joint Prehearing Statement which described the matter at issue in Navajo's protest as follows (at page 2):

> The single issue in this case is whether Navajo has met its burden in claiming a deduction in the value of its property attributable to economic or functional obsolescence. The taxpayer has the burden of requesting, proving and quantifying its claim for an obsolescence deduction. NMAC, 3.6.5.34A(2)(c).

The prehearing statement also listed the parties' witnesses and exhibits. Navajo and PTD separately stated that they would object if the other party attempted to present witnesses or exhibits not identified in the prehearing statement. The hearing officer's September 13, 2004 scheduling order had previously advised the parties (at page 2) as follows:

> Unless ordered by the Hearing Officer upon good cause shown, no issue shall be raised, no witness shall be allowed to testify and no exhibit shall be admitted into evidence unless listed in the prehearing statement. A prehearing conference will be set upon the request of either party or may be set on the Hearing Officer's own motion.

Navajo did not request a prehearing conference or notify the hearing officer that it was having difficulty obtaining information from PTD. Prior to the administrative hearing, Navajo never asked the hearing officer for assistance in obtaining access to witnesses or exhibits. Based on this procedural history, Navajo has no grounds to complain that it was unable to obtain an explanation of PTD's position or to prepare for the hearing on its protest.

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[2] Because PTD chose not to file a motion to compel, Navajo was never directly ordered to respond to PTD's discovery requests.

B. PTD's Basis for Denying the Obsolescence Deduction. Navajo contends that PTD's denial of Navajo's obsolescence deduction was based on a blanket policy not to grant obsolescence, rather than on a factual review of Navajo's individual circumstances. (Navajo Brief, pp. 3, 10). Steven Long, Navajo's expert witness, testified that he called PTD in May 2004 to determine why Navajo's obsolescence deduction was denied. Mr. Long spoke with Clifford Quintana, a tax compliance specialist with PTD. Mr. Quintana said that he had been instructed not to grant obsolescence and advised Mr. Long to speak with Mitch Bonney, Mr. Quintana's supervisor. At the hearing, Mr. Quintana confirmed Mr. Long's recollection of their conversation as follows:

> *Mr. Quintana*: I noticed that I was told by the bureau chief if there was any asking or requesting of obsolescence to inform him immediately, and I noticed when I was going through the rendition that the company was asking for obsolescence. And I immediately informed my supervisor, or my bureau chief.
>
> *Mr. Carson*: Okay, what did he tell you to do?
>
> *Mr. Quintana*: He told me that he was going to, um, that all obsolescence had been denied, and that for us to continue working on the rendition until he got back with me as far as letting us know if obsolescence was going to be admitted or not this year.
>
> *Mr. Carson*: And he told you this was a policy?
>
> *Mr. Quintana*: He told me that he was going to…that it was a directive that came from his, from his boss, which is our director, and I just followed the chain of command.

(Tape 4B at 121-135).[3]

Mr. Quintana's testimony indicates that a review of obsolescence claims was being conducted at the highest levels within PTD. On cross-examination, Mr. Long acknowledged that

[3] The counter numbers are based on a Sanyo tape recorder with approximately 705 counters per side.

during subsequent meetings with PTD employees, he was told that every claim for obsolescence was being personally reviewed by Tim Eichenberg, the PTD director. Mr. Long confirmed that he had two meetings with Mr. Eichenberg, as well as meetings with Clifford Quintana, Mitch Bonney, and Bridget Jacober, PTD's attorney. Nonetheless, the only PTD employee Navajo called as a witness at the administrative hearing was Mr. Quintana, who testified that he was acting on the instructions of his supervisor. Without the testimony of Mitch Bonney or Tim Eichenberg, there is no evidence concerning the basis for those instructions or the procedures PTD followed when it denied Navajo's obsolescence deduction. Navajo's conjecture on this issue is not evidence and does not establish that there was no reasoned basis for PTD's decision.

In any event, the resolution of Navajo's protest rests on the evidence and legal arguments presented at the administrative hearing, not on Mr. Quintana's telephone conversation with Mr. Long (see discussion in Part I, above). Through cross-examination of Navajo's expert witness and the testimony of its own expert, PTD provided substantial evidence to support its position that Navajo failed to establish its right to an obsolescence deduction for tax year 2004. A review of that evidence is set out in Part III of this decision.

C. Reliance on Methodology Accepted in Prior Years. Navajo argues that it was entitled to rely on the "well established" and "long-standing TRD approved method" for determining obsolescence, and that PTD's rejection of this methodology for the 2004 tax year was arbitrary and capricious. (Navajo Brief, pp. 3-4, 8). With regard to the first point, the evidence shows that the methodology Navajo relied on in calculating obsolescence for 2004 was neither well established nor particularly long standing. Navajo's combined Artesia/Lovington refinery has been in operation since 1991. The first year for which Navajo was allowed an

obsolescence deduction was 2001. PTD initially denied the deduction for 2001. Navajo protested this decision, and the parties embarked on an 18-month period of negotiation. When a settlement was finally reached, PTD agreed to apply the compromise methodology for determining obsolescence to both the 2001 and 2002 tax years. In March 2003, Navajo filed its 2003 annual property report using the same methodology, and the report was accepted as filed. One year later, PTD rejected use of the compromise methodology for the 2004 tax year and denied Navajo's obsolescence deduction. Navajo protested, and that protest is the subject of this proceeding.

Navajo contends that PTD "should not be allowed to change accepted procedures and agreed methodologies for reporting obsolescence retroactively after a return has been timely filed." (Navajo Brief, p. 4). In this case, however, there was no "agreed" methodology applicable to the 2004 tax year. The methodology Navajo used was the product of a negotiated settlement entered into for a prior tax year. Steven Long, who participated in the negotiations on behalf of Navajo, testified that he asked PTD to put the settlement in writing so it could be used in future years. PTD refused to do so, stating that regulations did not allow such an agreement. This should have put Navajo on notice that it could not rely on PTD's continued acceptance of this methodology in the future. New Mexico case law also provides taxpayers with notice that the state is not bound by a method of valuation used in prior tax years. In *Protest of Plaza Del Sol Ltd. Partnership v. Assessor for County of Bernalillo*, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986), the taxpayer raised an argument that is virtually identical to Navajo's argument in this protest:

> Taxpayers argue that during a prior tax protest proceeding involving Plaza del Sol, Taxpayers and the Board agreed, under a Stipulation of Settlement, to land values of $163,720 and improvement values of $ 1,500,000 for the 1976 tax year. Taxpayers also assert that the same assessed values for the three subject parcels of land were continued by Assessor in 1980, 1981 and 1982 and that it was error not to use these valuations in 1983 and 1984.

104 N.M. at 158, 717 P.2d at 1127. The Court of Appeals rejected the taxpayers' contention that the assessor was bound by his prior agreement or by his acceptance of the settlement values for three subsequent tax years:

> [A]lthough the Stipulation of Settlement was binding for the year 1976, it does not preclude Assessor or the Board from redetermining the proper tax valuation for Taxpayers' property in subsequent years. By statute, all property subject to valuation for property taxation purposes is required to be valued each year. Section 7-38-7. A stipulation fixing property tax values for a specific year is not binding for any following tax year; it is res judicata only for the year in question. *Property Tax Department v. Molycorp, Inc*., 89 N.M. 603, 555 P.2d 903 (1976).

Id. In the referenced *Molycorp* case, the New Mexico Supreme Court reversed the Court of Appeal's decision that the Department was collaterally estopped from using a valuation method that deviated from the method agreed to in settlement of a prior year's protest, stating:

> [T]he Department cannot be bound as to a 1975 valuation by an order specifically pertaining to a 1972 valuation, since each taxable year presents a new responsibility for placing a value on taxable property.

89 N.M. at 605, 555 P.2d at 905.

Navajo's argument is one of estoppel. New Mexico case law has consistently held, however, that estoppel is rarely applied against the state. This is especially true in the area of taxation. *See, e.g., Taxation and Revenue Department v. Bien Mur Indian Market Center*, 108 N.M. 228, 770 P.2d 873 (1989); *Johnson & Johnson v. Taxation & Revenue Department*, 1997 NMCA 30, 123 N.M. 190, 936 P.2d 872, *cert. denied*, 123 N.M. 168, 936 P.2d 337 (1997); *Kilmer v. Goodwin*, 2004 NMCA 122, 99 P.3d 690. In this case, the facts favoring estoppel are

even less compelling than the facts in *Plaza del Sol, supra* and *Molycorp, supra*. In each of those cases, the taxpayer was relying on a written order or settlement agreement. There was no written agreement in this case. When Navajo requested such an agreement in order to memorialize the compromise methodology for future years, PTD refused. At the administrative hearing, PTD's attorney elicited the following testimony from Steven Long:

> *Ms. Jacober*: Did you think this methodology would be applied to Navajo's property forever?
>
> *Mr. Long*: It's an interesting question. I don't think I ever gave that any thought. I mean, forever's a long time.
>
> *Ms. Jacober*: Did you ever inquire how long this methodology was applicable?
>
> *Mr. Long*: Inquire of who?
>
> *Ms. Jacober*: Of the people in the Property Tax Division.
>
> *Mr. Long*: No. No, I didn't.

(Tape 2B at 387-395). Mr. Long stated that after his initial request for a formal agreement was denied, he never asked PTD for written assurances concerning Navajo's continued use of the compromise methodology. Nor did he make any inquiry concerning Navajo's use of this methodology before filing Navajo's 2004 annual report. Based on New Mexico law and the evidence presented in this case, Navajo has no grounds to argue that it was entitled to base its 2004 property valuation on the unwritten settlement reached in compromise of a prior tax year.

D. **Retroactive Effect of PTD's Denial**. In *Molycorp*, *supra*, 89 N.M. at 605, 555 P.2d at 905, the New Mexico Supreme Court held that "each taxable year presents a new responsibility for placing a value on taxable property." The yearly process of valuation begins with a taxpayer's annual property report, which must be filed with PTD by the last day of

February. NMSA 1978, § 7-38-8(A). By May 1 of each year, PTD is required to notify the taxpayer of the net taxable value of its property. NMSA 1978, § 7-38-20(B). A taxpayer who disagrees with PTD's determination of value may protest that value by filing a petition of protest with the PTD director. NMSA 1978, § 7-38-22. In this case, Navajo filed its 2004 property report on March 29, 2004 (having been granted an extension of the statutory due date). PTD mailed its notice of valuation to Navajo on April 28, 2004, and Navajo filed its protest on May 25, 2004. The fact that PTD's decision to deny Navajo's obsolescence deduction was made after Navajo filed its 2004 property report does not make that decision retroactive, as Navajos claims. (Navajo Brief, p. 4). If it did, then all of PTD's valuations would be retroactive because the Property Tax Code requires notices of valuation to be issued after taxpayers have filed their annual property reports.

Navajo's claim of retroactivity appears to be based on its contention that it was bound by the methodology set out in its 2004 property report and was precluded from presenting new information to support its claim to obsolescence. This contention is not supported by the evidence. In order for an obsolescence claim to be considered timely, Regulation 3.6.5.34 A(2)(c)(iii) NMAC requires such claims to be submitted, with supporting documentation, at the time a taxpayer files its annual property report. Provided this requirement is met, there is nothing in the regulation that precludes the taxpayer from providing supplemental information in the context of a formal protest. After Navajo protested the denial of its 2001 obsolescence deduction, the parties entered into protracted negotiations that resulted in PTD's acceptance of a methodology that differed substantially from that contained in Navajo's 2001 property report. In contrast, there is no evidence that Navajo offered—or that PTD refused to consider—alternative

methods of calculating obsolescence in connection with the 2004 tax year. Instead, the evidence shows that Navajo has continued to base its obsolescence deduction for 2004 on the same methodology used to settle its 2001 protest. Navajo cannot argue prejudice based on PTD's failure to consider alternative methodologies that were never presented for its consideration.

III. Navajo's 2004 Claim to Economic and Functional Obsolescence. The issue remaining to be considered is whether the methodology Navajo employed to arrive at its 2004 valuation—standing on its own merits—supports Navajo's claim of functional and economic obsolescence. The valuation of Navajo's Artesia/Lovington refinery (which comes within the definition of a "plant") is governed by NMSA 1978, § 7-36-27(D):

> D. Pipelines, direct customer distribution pipelines, large industrial sales meters, tanks and plants shall be valued as follows:
>
> (1) the valuation authority shall first establish the tangible property cost of each item of property;
>
> (2) from such tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors which further affect the tangible property value of each item of property; and
>
> (3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of each item of property valued under this subsection shall not be less than twenty percent of the tangible property cost of each item of property.

Pursuant to Regulation 3.6.5.34 A(2)(c) NMAC, the term "other justifiable factors" referenced in § 7-36-27(D)(2) includes functional and economic obsolescence, which are defined in the regulation as follows:

> (i) Functional obsolescence is the loss in value due to functional inadequacies or deficiencies caused by factors within the property.
>
> (ii) Economic obsolescence is the loss in value caused by unfavorable economic influences or factors outside the property.

See also, Anaconda Co. v. Property Tax Department, 94 N.M. 202, 207, 608 P.2d 514, 519 (Ct. App. 1979), *cert. denied*, 94 N.M. 628, 614 P.2d 545 (1980) (obsolescence is generally understood to be the process "whereby property, because of causes other than physical deterioration, loses its economic usefulness to the taxpayer," citing 4 Mertens, *Law of Federal Income Taxation* § 23.104 (1973)). A taxpayer claiming a deduction for functional or economic obsolescence is required to support its claim with the following information:

> An economic or functional obsolescence factor must be provided together with documentation to support and demonstrate how the factor was arrived at. Such documentation shall consist of objective evidence demonstrating functional or economic obsolescence such as comparisons to a documented industry standard, to a close competitor or to an engineer's or appraiser's valuation, or any other comparable objective evidence of functional or economic obsolescence. Failure to provide documentation or proof satisfactory to the director will result in denial of an obsolescence adjustment.

3.6.5.34 A(2)(c)(iii) NMAC.

In this case, Navajo's 2004 claim to an obsolescence deduction is based on two factors: a claim of functional obsolescence resulting from the split configuration of the Artesia/Lovington refinery; and a claim of economic obsolescence resulting from the substantial capital investment Navajo has made to comply with governmentally-imposed environmental standards.

A. Expert Witnesses. At the administrative hearing, both parties presented the testimony of expert witnesses. Although each party disparaged the qualifications of the other's expert, both witnesses were qualified to testify.

(1) Navajo's Expert. Navajo called Steven Long as its expert. Mr. Long is the managing partner of Industrial Valuation Services, LLC. He has a background in engineering and was previously employed as a valuation engineer with Pritchard and Abbott Engineering

Corporation, an engineering appraisal company specializing in the valuation of oil and gas, as well as complex industrial and utility system properties on behalf of taxing jurisdictions. Mr. Long also worked as a tax specialist with General Motors Corporation and as a tax representative on the corporate financial staff of Shell Oil Corporation. In both of these positions, Mr. Long's responsibilities included the valuation, negotiation, and appeal of ad valorem tax matters. He also provided state legislative analysis, support, and testimony regarding property tax issues. Mr. Long is a registered senior property tax consultant for the State of Texas and a registered appraiser in the State of Colorado.

PTD objected to Mr. Long's qualification as an expert, arguing that he is not a licensed appraiser. New Mexico law is clear, however, that "an expert witness may be qualified on foundations other than licensure." *Banks v. IMC Kalium Carlsbad Potash Co.*, 2003 NMSC 26, ¶12, 134 N.M. 421, 77 P.3d 1014 (quoting *Madrid v. University of California*, 105 N.M. 715, 717, 737 P.2d 74, 76 (1987)). Mr. Long's engineering background and practical experience with the valuation of industrial complexes and oil and gas property for ad valorem tax purposes provided a sufficient background to allow him to testify as an expert in this case.

The weakness in Mr. Long's testimony on behalf of Navajo was not attributable to a lack of qualifications, but to the fact that he was asked to testify in support of an appraisal methodology based on negotiation and compromise. Mr. Long candidly acknowledged that "nothing" in that compromise methodology complied with the Uniform Standards of Professional Appraisal Practice. (SL, Tape 3A at 225-228; 288-289). He carefully avoided giving an opinion as to whether the methodology complied with PTD's regulations, saying only that former PTD employees represented that the methodology complied with the regulations.

(SL, Tape 2A, 317-330). Mr. Long also described some of his reservations concerning the compromises made in crafting the methodology. For example, PTD refused to allow obsolescence based on the age and current utility of Navajo's plant and equipment, although Mr. Long believed this was a justifiable basis for Navajo's claim to obsolescence (SL, Tape 2A at 640-652). Instead, PTD required Navajo to perform comparisons with other refineries as a "reality check." Mr. Long disagreed with this approach because it resulted in comparing a going business concern with pieces of property. (SL, Tape 1B at 652-680). PTD also required Navajo to perform these comparisons using an adjustment factor that Mr. Long believed was less accurate than the factor Navajo would otherwise have used (SL, Tape 2A at 219-228). Finally, Mr. Long conceded that the decision to apportion 100 percent of the obsolescence deduction to Eddy County was not based on standard appraisal techniques, but on PTD's concern that Lea County could not afford the loss of any property tax revenue attributable to the Lovington portion of the refinery. (SL, Tape 2A at 53-70; Tape 3B at 5-12).

In his testimony, Mr. Long succeeded in explaining the process and reasoning behind the compromise methodology Navajo and PTD used to settle Navajo's 2001 obsolescence claim. He did not succeed in establishing that this methodology complies with generally accepted appraisal techniques or that it should be accepted as a basis for granting Navajo's 2004 obsolescence claim.

(2) PTD's Expert. PTD's expert witness was Brent Eyre. Mr. Eyre is an Accredited Senior Appraiser (ASA), American Society of Appraisers, Dual Designation—Machinery & Tech Specialties (Public Utilities), Appraisal Review & Management. He is also a Certified General Appraiser, Utah State Division of Real Estate. Mr. Eyre was employed by the

Utah State Tax Commission from 1973 through 2000. The positions he held with the tax commission included field auditor, supervising auditor, information analyst and assistant director of the operations division. From 1987 through 2000, Mr. Eyre worked as the assistant director of the Property Tax Division and was responsible for the appraisal of all centrally assessed companies in the State of Utah. Mr. Eyre has also served as a member of many professional organizations and has both taken and taught numerous appraisal courses (*see*, PTD Exhibit A).

Navajo objected to Mr. Eyre's qualification as an expert, arguing that he had not personally visited Navajo's refinery and was not an expert in valuing refineries. The purpose of Mr. Eyre's testimony, however, was not to provide an alternative valuation of Navajo's refinery. Mr. Eyre explained that he had been hired to review Navajo's 2004 property report and other pertinent documents to determine whether the methodology Navajo used to calculate obsolescence met generally accepted appraisal practice. Mr. Eyre has a general knowledge of refineries and the refinery business in New Mexico and West Texas. He testified that accepted appraisal standards are applicable to refineries as well as to other industrial complexes, and Navajo presented no evidence to the contrary. In preparation for his testimony, Mr. Eyre reviewed Navajo's 2004 property report, as well as the annual reports and SEC filings of Navajo's parent company. The fact that Mr. Eyre had not personally visited Navajo's refinery does not disqualify him from testifying in this case.

Given Mr. Eyre's professional accreditations and experience, he was well qualified to give an opinion as to whether the methodology Navajo used to calculate its obsolescence deduction was based on accepted appraisal practice. Mr. Eyre testified that the methodology did

not meet this standard and did not establish Navajo's claim to an obsolescence deduction. The basis for this opinion is set out in more detail Parts III B and C, below.

B. Claim to Functional Obsolescence. Navajo's 2004 annual property report claimed a $22.2 million deduction for functional obsolescence resulting from the split configuration of its the Artesia/Loving refinery. Navajo maintains that the cost of operating a refinery split between two locations exceeds the cost of operating a refinery in one location and that this difference represents obsolescence. Brent Eyre testified that according to standard appraisal practice, excess operating costs cannot be used to establish functional obsolescence without a preliminary determination of excess capital costs. The first step in Navajo's analysis should have been a replacement cost study to determine what it would cost to build a one-location facility. That information would then be used to determine the existence of excess capital costs attributable to Navajo's two-location facility. Because an excess capital cost study was not performed in this case, Mr. Eyre concluded that Navajo's analysis is incomplete and does not establish its claim to functional obsolescence. (Testimony of Brent Eyre ("BE"), Tape 4B at 412-429).

Mr. Eyre noted that Navajo did perform a capital cost analysis when it first acquired the Lovington facility in 1989 and began exploring the possibility of using that facility to expand Navajo's New Mexico refining capacity. When it made the decision to reactivate the Lovington refinery and maintain crude units at two locations, rather than expanding its existing refinery in Artesia, Navajo considered the following factors (set out in more detail under Finding of Fact No. 7, above): (1) the Lovington refinery already had county, state, and federal operating permits in place; (2) reactivating the Lovington refinery allowed Navajo to expand its refining capacity

more quickly and secure pipeline space ahead of its competition; (3) the Lovington facility had injection wells available for waste water disposal while the Artesia facility's ability to handle additional waste water was limited; and (4) the Lovington facility offered a large amount of offsite tankage that would be expensive to move. At the administrative hearing, Steven Long testified that the economic considerations that originally led Navajo to reactivate the Lovington refinery still exist today. This evidence conflicts with Navajo's current claim that the split location of its refinery creates excess operating costs over the cost of maintaining a single refinery in Artesia.

C. Claim to Economic Obsolescence. Navajo's 2004 annual property report claimed a $63.8 million deduction for economic obsolescence resulting from the environmental improvements mandated by new EPA regulations. Navajo seeks to deduct the total cost of the gas oil hydrotreater unit, sulfur plant, amine plant upgrade, and flue gas scrubber it is required to install at its Lovington/Artesia refinery. The justification for the deduction is Navajo's assertion that these capital investments have no economic value, but "are solely for the purpose of governmental compliance and will not directly result in an increase in capacity or profit." (Exhibit 5, p. 3).

Navajo's claim that its environmental expenditures add no value to its refinery conflicts with representations made by Holly Corporation, Navajo's parent company. In January 2002, Holly announced that Navajo had received permits for the construction of the new gas oil hydrotreating unit and noted that the unit "will enable Navajo to expand substantially its capabilities to produce higher-valued California grade gasolines required in its Phoenix market while increasing Navajo's overall percentage yield of gasoline." (Exhibit 3, Appendix II). In its

2003 annual report, Holly informed its stockholders that the gas oil hydrotreating unit "will satisfy future EPA-mandated gasoline specifications while improving the refinery's yield and production of higher value products." (Exhibit D, Holly's 2003 Annual Report). Holly further noted that with the 2003 expansion and upgrade of its refinery, Navajo acquired the ability to process a variety of sour crude oils into high value light products. This, in turn, allowed management to vary the crude supply mix to take advantage of changes in raw material prices and to respond to fluctuations in the availability of different types of crude oil supplies. (Exhibit D, Holly's 2003 Annual Report). These statements contradict Navajo's current claim that the improvements made to comply with environmental regulations added *no* value to the Artesia/Lovington refinery.

In his review of Navajo's claim, Brent Eyre pointed out that federally-mandated standards are not unique to the refinery business. Many industries are subject to environmental and safety standards that require an investment of capital, and at least part of that cost is ultimately passed on to consumers in the form of increased product prices. As an example, Mr. Eyre pointed to the auto industry, which has been required to install airbags and catalytic converters in their automobiles. When these requirements went into effect, the price of automobiles went up. The same can be expected as a result of the new environmental standards imposed on refineries. While a company may not recover all of the costs of complying with government regulations, it is illogical to assume that none of those costs can be recovered. (BE, Tape 4B at 632-705).

Mr. Eyre's conclusions are consistent with the analysis contained in a special report issued by Fitch Ratings and included in Appendix II to Navajo's 2004 annual property report

(Exhibit 5).[4] In a July 1, 2003 report entitled *What a Smell of Sulfur*, Fitch made the following analysis of the effect of environmental regulations on refineries:

> In spite of the significant capital costs and strain on free cash flows, Fitch expects U.S. refiners to ultimately benefit from the increasingly stringent regulations as refined product supply is removed from the market. Although refiners and manufacturers will have to tighten their belts, a significant portion of these costs may ultimately be passed along to the end consumers through higher prices and margins. Some less competitive refiners, however, will still be unable to meet the new regulations and will shut down their facilities.

Navajo has not been one of the refineries forced to close, but has actually expanded its production. The table on page 8 of Holly's 2003 annual report shows that during 2003, Navajo's refinery was running at close to full capacity and Navajo was selling all of the products it produced. Navajo's net sales and net cash operating margin also increased substantially between 2002 and 2003. Brent Eyre testified that in his experience, properties operating at close to 100% capacity do not experience obsolescence in the range of 40%. (Tape 5A at 210-234).

Mr. Eyre pointed out several other areas where Navajo's valuation did not meet generally accepted appraisal techniques. He noted that while PTD's valuation of Navajo's refinery included the environmental improvements at their depreciated value, Navajo deducted 100 percent of the gross cost of those improvements. Navajo also deducted $5.7 million for a flue gas scrubber that has yet to be completed. (Tape 5A at 572-587; *see also*, Exhibit 5, p. 3, projecting the "estimated cost" of the scrubber at $5.7 million). Finally, Mr. Eyre testified at some length concerning Navajo's attempt to validate its obsolescence claim based on a comparison of the Artesia/Lovington refinery with the Woods Cross refinery in Utah and the Big

[4] Although the industry data in Appendix II was included at the request of PTD and was not an integral part of Navajo's valuation, Steven Long testified that he had no reason to believe that the information contained in the Fitch report was not credible. (Tape 3B at 394-401).

Spring refinery in Texas. Mr. Eyre concluded that neither of these comparisons met accepted appraisal standards and gave detailed testimony in support of his conclusion. (Tape 5A at 255-374).

D. Summary. The evidence presented in this case establishes that the methodology Navajo used to compute its obsolescence deduction does not meet accepted appraisal practice. Navajo argues that PTD's acceptance of this flawed methodology for tax years 2001, 2002, and 2003 requires PTD to accept the same methodology for tax year 2004. New Mexico case law holds otherwise and makes it clear that PTD is not bound by the errors of previous years. *Alexander v. Anderson*, 1999 NMCA 21, ¶ 20, 126 N.M. 632, 973 P.2d 884 (an agency is not precluded from correcting its mistakes). *See, also, Property Tax Department v. Molycorp, Inc.*, 89 N.M. 603, 555 P.2d 903 (1976).

Much of the information PTD used to evaluate Navajo's 2004 obsolescence deduction was not available at the time the compromise methodology was originally negotiated in 2001. As discussed in Part III C, above, Navajo's claim to economic obsolescence is based on its assertion that the capital expenditures made to comply with environmental standards have no economic value and will not result in an increase in capacity or profit. When Navajo first made this assertion in 2001, none of the environmental upgrades had been made to the Artesia/Lovington refinery. By the time Navajo's 2004 annual property report was filed, construction of the gas oil hydrotreating unit, which represents the bulk of the required investment, had been completed. In its 2003 annual report, Navajo's parent company informed its shareholders that the hydrotreating unit would enable Navajo to improve its yield and production of higher value products and had given Navajo "a strong strategic and geographic advantage over its competitors." (Exhibit D,

Holly's 2003 Annual Report, "Dear Fellow Stockholders"). This information directly contradicts the premise upon which PTD originally allowed Navajo's claim to economic obsolescence. Navajo's argument that PTD must continue to accept a methodology based on outdated information and negotiated in settlement of a different tax year is without merit.

Also without merit is Navajo's complaint that PTD's expert witness did not provide an alternative valuation of Navajo's refinery or provide guidance on how Navajo should calculate obsolescence. (Navajo Brief at 15). In *Anaconda, supra,* 94 N.M. at 207, 608 P.2d at 519, the New Mexico Court of Appeals addressed a similar argument as follows:

> The statute does not require the Department to establish a deduction for Anaconda. It is the taxpayer who must establish the right to a deduction. *Reed, supra*. Law in other states and federal law concerning the concept of obsolescence confirms our position that the burden is on the taxpayer to prove the amount of the deduction for obsolescence to which it is entitled.

In *Hannahs v. Anderson*, 1998 NMCA 152, ¶ 31, 126 N.M. 1, 966 P.2d 168, *cert. denied*, 126 N.M. 532, 972 P.2d 351 (1998), the court confirmed that it is the taxpayer's responsibility to present credible evidence to support its valuation:

> Taxpayers presented no evidence that their appraisal method was generally acceptable. Taxpayers attempt to shift this burden by arguing that the Assessor did not present evidence that Taxpayers' technique was invalid. However, it is not Assessor's responsibility to establish the invalidity of Taxpayers' appraisal technique. If Taxpayers want the Board, or this Court, to accord substantial weight to their valuation method, it is their responsibility to present some testimony or evidence which sets forth that method as a generally accepted appraisal technique.

Navajo has failed to meet its burden in this case.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely, written protest to the Department's April 28, 2004 Notice of Valuation, and jurisdiction lies over the parties and the subject matter of this protest.

B. PTD's denial of Navajo's 2004 claim to an obsolescence deduction was made in accordance with PTD's statutory authority and was not arbitrary or capricious.

C. Navajo failed to meet its burden of establishing its claim to a deduction for functional and economic obsolescence.

For the foregoing reasons, the protest of Navajo Refining Co., LLP is denied.

IT IS THEREFORE ORDERED that no change shall be made to the Property Tax Division's 2004 valuation of Navajo's property.

This decision is issued in the name of the Secretary of the New Mexico Taxation and Revenue Department on April 25, 2005.