

PHILLIPS 66 COMPANY

Petitioner

vs.

BTA DOCKET NO. L01962

ASSESSOR WENDY AGUILLARD AND  
THE CALCASIEU PARISH BOARD OF  
REVIEW

Respondent

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**JUDGMENT WITH WRITTEN REASONS**

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This matter came before the Board for oral argument on the appeal of Phillips 66 Company ("Appellant" or "Phillips") by Zoom on November 7, 2024, with Local Tax Judge Cade R. Cole presiding. Appearing before the Board were Jesse Adams, attorney for the Appellant, and Brian Eddington, attorney for Assessor Wendy Aguillard ("Assessor") and the Calcasieu Parish Board of Review ("BoR") (collectively, "Appellee"). Prior to oral argument, counsel for both parties requested that the matter be submitted on the briefs. After a brief colloquy, the Board granted counsels' request, and the matter was submitted. The Board now issues the following Judgment in accordance with the attached Written Reasons:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that there be Judgment in favor of the Appellee and against the Appellant. The Board AFFIRMS the LTC's decision to uphold the Assessor's valuation of \$1,049,204,866.00 for the Appellant's personal property in Assessment No. 00191930 for the Tax Year 2022.

Judgment Rendered and Signed at Baton Rouge, Louisiana, on this  
27th day of January, 2025.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

PHILLIPS 66 COMPANY

Petitioner

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This matter came before the Board for oral argument on the appeal of Phillips 66 Company (“Appellant” or “Phillips”) by Zoom on November 7, 2024, with Local Tax Judge Cade R. Cole presiding. Appearing before the Board were Jesse Adams, attorney for the Appellant, and Brian Eddington, attorney for Assessor Wendy Aguillard (“Assessor”) and the Calcasieu Parish Board of Review (“BoR”) (collectively, “Appellee”). Prior to oral argument, counsel for both parties requested that the matter be submitted on the briefs. After a brief colloquy, the Board granted counsels’ request, and the matter was submitted. The Board now issues the following Written Reasons for ruling.

**BACKGROUND:**

Appellant owns personal property in the form of refining assets, specifically: pumps, compressors, motors, and petroleum refining equipment (collectively, the “Property”)<sup>1</sup> at its Lake Charles Refinery (“LCR”) in Westlake, Louisiana. The Property and the LCR are located within the Appellee’s taxing jurisdiction. The LCR is a crude oil refinery which primarily manufactures gasoline & diesel fuels. The LCR’s refining process entails distilling crude oil, naphtha reforming, fluid catalytic cracking, alkylation, hydrocracking, hydro-sulfurization, and delayed coking. The LCR also produces jet fuel and liquid petroleum in the forms of butane, pentane, and propane.

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<sup>1</sup> Other classes of property were also valued and assessed, but only the Property identified above at issue in this appeal.

For the Tax Year 2022, the Assessor valued the Property at \$1,049,204,866.00. Appellant protested the Assessor's valuation, particularly the Assessor's calculation of an obsolescence factor. The BoR upheld the Assessor's valuation and Appellant sought review with the Louisiana Tax Commission ("LTC"). The LTC, after hearing the appeal, affirmed the Assessor's valuation. Appellant now appeals from the LTC's decision.

Appellant claims that the Assessor should have applied an obsolescence factor of 65% (rounded) and thereby arrived a valuation of the Property in the amount of \$407,879,241.00. The Appellant supported its valuation before the LTC with an analysis of a December 2021 sale of a Shell Puget Sound refinery and a comparison of said refinery to the LCR. Appellant's comparison was performed by its Director of Property Tax, Chris G. Cisneros. In performing the analysis, Mr. Cisneros compared: (1) atmospheric crude distillation capacity; (2) Nelson complexity; and (3) equivalent distillation capacity.<sup>2</sup>

Mr. Cisneros compared these three factors using linear economies of scale factors and an exponential economies of scale factors for a total of 6 comparison factors. Mr. Cisneros averaged the six factors together to arrive at the final proposed obsolescence factor of 64.5992742% (rounded up to 65%). Mr. Cisneros further provided press releases from several additional refinery sales other than the Puget Sound refinery sale. The purpose of providing the additional sales press releases, according to Mr. Cisneros' testimony before the LTC, was to establish a general range of valuations for sales of refineries of lesser and greater complexity and size than the LCR.

In addition, the Appellant claims that negative external factors in the market support a higher obsolescence factor. The LCR was built in 1941 by Continental Oil

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<sup>2</sup> Mr. Cisneros described atmospheric crude distillation capacity as the first and most fundamental step in the refining process, the primary purpose of which is to separate crude oil into its components for further processing. Mr. Cisneros described Nelson complexity as a measure of the sophistication of an oil refinery that generally reflects its flexibility in processing heavier sour crudes into more value-added products. Mr. Cisneros described equivalent distillation capacity as a method to normalize refinery comparisons by multiplying the atmospheric crude capacity by the complexity factor.



Co. The LCR's older refining capacity yields about 70% marketable fuel from crude oil inputs, a figure that Appellant calls "clean product yield." The LCR has the lowest clean product yield of any of Appellant's refineries.

The LCR does not have the conversion units necessary to produce Ultra-Low Sulfur Diesel Fuel ("ULSDF"). ULSDF is required by United States environmental regulations for trucks, trains, and general public highway diesel vehicles. However, Appellant can sell non-ULSDF outside the United States. Retrofitting the LCR for production of ULSDF would be cost-prohibitive. In addition, space for the improvements needed to retrofit the LCR is geographically limited by the I-10, the city of Westlake, and another facility owned by Westlake Chemical.

The Assessor supported their obsolescence factor with a throughput/inutility analysis performed by Karen Khan, PE, Director of I&U Appraisals with Pritchard and Abbot, Inc. Ms. Khan compared the LCR's design capacity of 268,000 BBL/day to its actual 2021 production capacity of 214,000 BBL/day. Ms. Khan further applied a Chilton factor, which is an exponential scale factor.<sup>3</sup> However, Ms. Khan did not apply a linear scale factor. Using this method, Ms. Khan arrived at an obsolescence factor of roughly 11%.

Nevertheless, the Assessor increased the obsolescence factor for the valuation "due to continued hurricane recovery & 2019 additions." Hurricane recovery efforts were necessitated by hurricanes Laura and Delta. The "2019 additions" are additions to the assessed property in 2019 because, according to the Assessor, certain assets were underreported in prior years. After making these adjustments, the Assessor arrived at an obsolescence factor of 20%.

The LTC found that the Assessor's valuation was supported by Ms. Khan's analysis. In addition, the LTC found that the Assessor's use of a greater factor was not arbitrary. The larger obsolescence factor was advantageous to the Appellant, as

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<sup>3</sup> According to the Assessor's evidence introduced into the record before the LTC, the original Chilton factor equation was created to estimate construction cost based on a different production capacity: *Cost Scale Factor as a Percent* =  $[\{Capacity B / Capacity A\}^n] \times 100$ . In the equation, Capacity A is "Proposed Design Capacity," Capacity B is "Known Production Capacity," and *n* is an exponent or scale factor, normally 0.6 or 0.7, depending on the type of facility or equipment

it yielded a lower overall valuation of the Property. The LTC disregarded the sale of the Puget Sound refinery because: the Appellant had only minimal, publicly available documentation of the sale; it was only one sale that occurred outside of Louisiana; and the fact that Mr. Cisneros's comparison only looked at three factors.

#### **ASSIGNMENTS OF ERROR:**

Appellant raises seven assignments of error:

1. The LTC's decision to disregard Appellant's data concerning the sale of the Puget Sound refinery was arbitrary and capricious because no LTC rule or regulation articulates any standard regarding the necessary sample size of sales data required.
2. The LTC's decision to disregard Appellant's data concerning the sale of the Puget Sound refinery was arbitrary and capricious because no LTC rule or regulation articulates any standard regarding the type of evidence that can be provided.
3. The LTC's decision to disregard Appellant's data concerning the sale of the Puget Sound refinery was arbitrary and capricious because no LTC rule or regulation requires a taxpayer provide the "actual" sales documents from a comparable sale.
4. The LTC's decision to disregard Appellant's data concerning the sale of the Puget Sound refinery was arbitrary and capricious because there is no standard or directive in the LTC's rules or regulations regarding the acceptable procedure for adjusting comparable sales.
5. The LTC's decision to disregard Appellant's data concerning the sale of the Puget Sound refinery was arbitrary and capricious because the LTC's rules and regulations do not restrict the LTC from considering data from comparable sales occurring outside Louisiana.
6. The LTC erred and acted in arbitrary and capricious manner by not considering any other evidence submitted by the Appellant regarding functional and economic obsolescence.

7. The LTC erred and was arbitrary and capricious in singularly relying on the throughput/inutility analysis conducted by the Assessor's consultant and by not considering economic and functional obsolescence as two separate items.

#### **STANDARD OF REVIEW:**

"Property taxation begins with the assessor determining the fair market value of property then making his assessment." La. Const. Art. VII, §18(D); *D90 Energy, LLC v. Jefferson Davis Parish Bd. of Review*, 2020-00200 (La. 10/1/20), 341 So.3d 492. Review of the correctness of assessments is governed by La. Const. Art. VII, §18(E), which states: "[t]he correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law." Judicial review of the LTC's decisions is provided for in La. R.S. 47:1998.

The Board has plenary jurisdiction over all matters concerning state and local taxes or fees under Louisiana Constitution Article V, §35. La. R.S. 47:1998(A)(1)(a) and (H)(1) grant an appellant the option of filing their appeal with the Board or the district courts. La. R.S. 47:1998(H)(2) states that the Board's review "shall be in accordance with the provisions of this Section applicable to a district court." Like a district court, the Board's review of the LTC's decision is governed by the Administrative Procedure Act. *Williams v. Opportunity Homes Ltd. P'ship.*, 2017-0955 (La. 3/13/18), 240 So.3d 161. The scope of the Board's review is limited to the administrative record established before the LTC. *See id.*; *Enerfin Field Servs., LLC v. Vernon Par. Bd. of Review*, 2022-740 (La. App. 3 Cir. 6/28/23, 6-7), 368 So.3d 275, 278 (quoting *D90*, 341 So.3d at 499-500).

La. R.S. 49:978.1(G)<sup>4</sup> states:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if

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<sup>4</sup> This provision was renumbered from La. R.S. 49:964(G) by 2022 Act 663.



substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

A conclusion of a public body is "capricious" when the conclusion has no substantial evidence to support it, or is contrary to substantiated competent evidence. *Warren Energy Res., Inc. v. Louisiana Tax Comm'n*, 2002-115, p. 8 (La. App. 3 Cir. 8/28/02), 825 So.2d 572, 578, writ denied, 2002-2450 (La. 12/13/02), 831 So.2d 985. The word "arbitrary" implies a disregard of evidence or of the proper weight thereof. *Id.* As stated in La. R.S. 49:978.1(G), and except for matters of witness credibility as stated in subparagraph (6), the LTC's factual findings are not entitled to deference by a reviewing court. The Board must make its own determination and conclusions of fact by a preponderance of evidence, based upon the Board's own review of the record in its entirety. *See id.*; *D90 Energy*, 341 So.3d at 502, n. 5, 2020-00200 (La. 10/1/20) at p. 10; *Cantium, LLC v. Lafourche Parish Bd. of Review*, BTA Docket No. L01559 (La. Bd. Tax App. 7/13/23); 2023 WL 9290320, at \*7.

## DISCUSSION:

Appellant and Appellee agree that *some* reduction in value for obsolescence is appropriate. The LTC's regulations define obsolescence as:

[A] decrease in the value of a property occasioned solely by shifts in demand from properties of this type to other types of property and/or to personal services. Some of the principal causes of obsolescence are:

1. changes in the esthetic arts;
2. changes in the industrial arts, such as new inventions and new processes;
2. legislative enactments;
4. change in consumer demand for products that results in inadequacy or overadequacy;
5. migration of markets that results in misplacement of the property.<sup>5</sup>

The LTC's regulations define economic obsolescence as:

[T]he loss of appraisal value (relative to the cost of replacing a property with property of equal utility) resulting from causes outside the property that suffers the loss. Usually locational in nature in the depreciation of real estate, it is more commonly marketwide in personal property, and is generally considered to be economically infeasible to cure.<sup>6</sup>

The LTC's regulations define functional obsolescence as:

[L]oss in value due to lack of utility or desirability of part or all of the property, inherent to the improvement or equipment. Thus, a new structure or piece of equipment may suffer functional obsolescence.<sup>7</sup>

The Third Circuit has instructed courts to defer to the LTC's interpretation of its own regulations, stating:

A reviewing court should afford considerable weight to an administrative agency's construction and interpretation of its rules and regulations adopted under a statutory scheme the agency is entrusted to administer, and its construction and interpretation should control unless found to be arbitrary, capricious, or manifestly contrary to its rules and regulations.<sup>8</sup>

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<sup>5</sup> LAC 61:V.301 ("Obsolescence").

<sup>6</sup> LAC 61:V.301 ("External (Economic) Obsolescence").

<sup>7</sup> LAC 61:V.301 ("Functional Obsolescence").

<sup>8</sup> *Enerfin Field Servs., LLC v. Vernon Par. Bd. of Review*, 2022-740 (La. App. 3 Cir. 6/28/23, 6-7), 368 So.3d 275, 278 (quoting *D90 Energy, LLC v. Jefferson Davis Par. Bd. of Review*, 20-200, p. 10 (La. 10/1/20), 341 So.3d 492, 499-500).



**Assignments of Error 1 -5:**

The LTC ruled that the press release offered by the Appellant concerning the sale of the Puget Sound refinery would not constitute evidence of a “properly documented” sale under LAC 61:V.907(D)(6). That regulation is codified under the section heading: “Valuation of Oil, Gas, and Other Wells,” and under the sub-heading: “surface equipment.” In its decision, the LTC acknowledged that LAC 61:V.907(D)(6) does not technically apply to the type of Property at issue in this dispute. Nevertheless, the LTC determined that the concept of a properly documented sale was relevant because, “[n]either the Taxpayer; the Assessor, nor this Commission can verify that the published ‘unadjusted sale price’ of \$350,000,000 is accurate/reliable. Specifically, absent review of the actual sales documents, it is impossible to determine a number of relevant factors, including whether the transaction included an assumption of liabilities.” Further, the LTC noted that the “properly documented” sale concept is also employed in regulations concerning pipelines<sup>9</sup> and brine operation wells.<sup>10</sup>

There are examples of properly documented sales in the jurisprudence. In *Warren Energy Res., Inc. v. Louisiana Tax Comm’n*, 2002-115 (La. App. 3 Cir. 8/28/02), 825 So.2d 572, writ denied, 2002-2450 (La. 12/13/02), 831 So.2d 985, the taxpayer provided a pipeline sale document, documents that identified the pipelines within the taxing jurisdiction, and documentation that described certain gas gathering lines as being more than twenty years old, with throughput of 55 Mmcfd, as opposed to the 300 Mmcfd for which they were originally designed. The taxpayer’s documentation also indicated that fourteen miles of the lines at issue were abandoned in 1997. The Court found that this was sufficient documentation to support the taxpayer’s valuation of gas gathering pipelines and that the Assessor’s failure to consider the documents was arbitrary and capricious. *Id.* at 578.

In *D90 Energy, LLC v. Jefferson Davis Parish Bd. of Review*, 2020-00200 (La. 10/1/20), 341 So.3d 492, the taxpayer provided: (1) the assignment, conveyance, and

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<sup>9</sup> LAC 61:V.907(D)(6).

<sup>10</sup> LAC 61:V.1007(B)(4)(d).

bill of sale; (2) a copy of the front and back of the purchaser's \$100,000.00 check to the seller; and (3) emails between the broker and the president of the purchaser documenting the negotiated \$100,000.00 purchase price. *Id.* at 494. The Louisiana Supreme Court held that, pursuant to its express regulatory directive, the LTC did not err by considering these documents as evidence of a comparable sale. *Id.* at 499-500. Furthermore, the Court found that a preponderance of the evidence supported the validity and arms-length nature of the sale. *Id.* at 500-501.

The documentation provided by the Appellant in this case is significantly less robust than the documentation provided in the example cases cited above. The Appellant did not provide sales documents, conveyance records, evidence establishing the context in which the price was negotiated, or evidence showing how the purchase price was allocated between the value of the property and other consideration. Instead, the Appellant provided publicly available press releases that stated the total purchase prices of certain sales.

Based on a de novo review of the record, the Board cannot say that the LTC erred in disregarding Appellant's evidence concerning purportedly comparable sales.<sup>11</sup> Appellant's evidence illustrates only a very broad estimate of the total purchase price for a refinery sale. That might provide a basis for a ballpark range to begin valuation with. However, information establishing the general context of refinery sales does not outweigh the Assessor's evidence. The Assessor showed that their valuation was supported by reliable methodology. That methodology utilized the available data that was specifically relevant to the LCR. As the LTC pointed out, the information in the press release does not inform the reader as to how the total price was attributed to different forms of consideration involved in the sale, such as the value of the personal property involved. Moreover, the record shows that Mr. Cisneros acknowledged that, "the comparable sales may have included other non-refining assets (electric generating-facilities, pipelines, paybacks, etc.) however, no

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<sup>11</sup> Evidence concerning the sale of the Puget Sound refinery is the focus of the Appellant's arguments, but they cite to evidence concerning several sales in the record, none of which are more extensively documented or more comparable than the Puget Sound sale.



attempt was made to adjust for these items.” Consequently, the Appellant’s information concerning the sale of purportedly comparable refineries does not establish that either the Assessor or the LTC incorrectly determined the FMV of the Property. Assignments of error one through five are without merit.

**Assignment of Error Numbers Six and Seven:**

Appellant claims that the LTC and the Assessor exclusively relied on Ms. Khan’s throughput/inutility analysis. By doing so, the LTC and the Assessor allegedly failed to consider Appellant’s other evidence concerning functional and economic obsolescence. In particular, the Appellant points to evidence concerning the LCR’s lack of a ULSD unit and the trend towards electric vehicles. Appellant further maintains that Ms. Khan’s analysis failed to determine functional obsolescence separately from economic obsolescence.

The record reflects that Ms. Khan considered the effect of functional obsolescence on the FMV of the Property. In Assessor’s Exhibit 5, Ms. Khan states that she treated the LCR’s lack of a ULSD unit as economically “incurable” functional obsolescence under “Property Assessment Valuation 3rd Addition” by the IMO (International Association of Assessing Officers). Ms. Khan determined that the lack of a ULSD unit was “incurable” based on information provided by the Appellant. Specifically, the Appellant represented that a retrofit was not economically feasible.

“Incurable” functional obsolescence is, according to Ms. Khan, measured as the net income loss attributable to the deficiency in comparison with otherwise competitive properties. The Appellant did not provide the Assessor with income data. Instead, Appellant provided utilization data. Ms. Khan’s approach is therefore supported by the evidence provided by the Appellant that is in the record developed before the LTC.

The Board also finds that the LTC did not err by disregarding the purported trend towards electric cars. The Appellant’s evidence on this issue may suggest that a high-level shift in the market may occur at some point in the future. However, the effects of that trend, if any, are currently remote and speculative. That is not enough to tip the balance of evidence in the Appellant’s favor. Moreover, the evidence related



to these concerns does not show that the Assessor should have increased the economic obsolescence factor by an amount greater than the 9% upward adjustment that the Assessor did grant in addition to the factor determined by Ms. Khan.

**CONCLUSION:**

The Assessor's calculation of obsolescence for the LCR is supported by utilization data and the Assessor's throughput/inutility analysis. The Appellant's evidence concerning other refinery sales is vague as to the allocation of the total price, particularly with respect to what value was allocated to the category of Property that is at issue in this case. The Appellant's evidence concerning potential market changes in the future is speculative and inadequate when put against the assessor's evaluation methodology and supporting data. Furthermore, the Assessor increased the obsolescence factor that their expert calculated by an additional 9%, and the Appellant's evidence does not show that the Assessor should have granted an even larger adjustment. Thus, a preponderance of the evidence weighs in favor of the valuation determined by the Assessor and upheld by the LTC. Accordingly, the Board affirms the LTC's decision to uphold the Assessor's valuation of the Property.

BATON ROUGE, LOUISIANA, THIS 27<sup>th</sup> DAY OF JANUARY, 2025.

FOR THE BOARD:



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LOCAL TAX JUDGE CADE R. COLE