Special Areas Board Composite Assessment Review Board

CITATION: ATCO Power Canada Ltd. v. Special Areas Board 2012 CARB

Assessment Roll Number:	207149
Address/Legal:	Pt 29-28-13-4
Assessment Year:	2011
Assessment Type:	Annual

BETWEEN:

ATCO Power Canada Ltd. - Complainant

and

Special Areas Board– Respondent

Decision of
Lynn Patrick, Presiding Officer
Dug Major, Member
Wayne Richardson, Member

Background:

[1] A merit hearing was conducted on September 9-13, 2013 in respect of a complaint filed by the Complainant on July 13, 2012. The complaint relates to the assessment by the Respondent of a power generating station jointly owned by the Complainant (as owner of Atco Power 2000 Ltd) and TransAlta Corporation, located on a Pt 29-28-13-4 and the subject of roll number 207149.

[2] The parties did not have any objection to members of the CARB panel as established by council pursuant to s. 454.2(1) of the *Municipal Government Act* (Act).

Legislation

[3] The CARB derives its authority to make decisions under Part 11 of the *Municipal Government Act,* R.S.A. 2000, c.M-26.[1]

[1] In this decision, the following abbreviations are used: *Municipal Government Act*, R.S.A. 2000, c.M-26 – "MGA"
Matters Relating to Assessment and Taxation Regulation, A.R. 220/2004 - "MRAT"
Matters Relating to Assessment Complaints Regulation, A.R. 310/2009 – "MRAC"

Preliminary Matters

[4] The parties jointly asked the CARB to consider hearing the complaint filed in relation to the 2013 tax year in addition to the complaint filed by the Complainant for the 2012 tax year. The parties indicated that the basic issues are the same and that they would waive the requirements for notice under MRAC. Further, the parties indicated that they could provide the revised calculations prior to the close of the hearing.

Decision on the Preliminary Matter

[5] The CARB considered the suggestion by the parties that the complaint in relation to the 2013 tax year be heard at the same time as the complaint in relation to the 2012 tax year. While the CARB understands the parties' desire for efficiency and accepts the parties' statements that the issues are the same between the two years, the CARB decided that the hearing would proceed only in relation to the 2012 complaint for the following reasons. First, the CARB is constituted only for the 2012 complaint, and in order to hear the 2013 complaint the appointments for the members would have to be changed. As this matter arose on the morning of the first day of hearing, the CARB was not certain that the appointments could be extended in a timely manner. Further, if the CARB heard evidence prior to the members' appointments being extended, there is some question about whether the decision of the CARB would be within its jurisdiction. As the matter stood as of the start of the hearing, the CARB had no authority to make an order for the 2013 tax year complaint. The CARB suggested that the parties could make use of the decision for the 2012 tax year complaint to shorten the 2013 tax year complaint, but could not accommodate the parties' request.

Position of the Parties

Complainant

[6] The Complainant advised that the complaint deals with the Sheerness generating station, which is located 20 miles or 35 kilometers south of Hanna. The assessment under complaint is in relation to the buildings and structures, which have been assessed through a Marshall & Swift valuation, using a 50 year age life with an end of life of 2033. At the hearing, the Complainant sought a reduction in the assessment from the current value of $59,137,270 to $27,729,366, although in its complaint, the Complainant sought a reduction of the Assessment to $6,206,510 (Exhibit R20, Tab 1) and a reduction to $21,314,700 in its original submissions (Exhibit C12, p. 60). In dispute are the following four issues:

a) the end of life for this special purpose facility, whose coal stocks are to end in 2026.
b) the valuation used for lighting , which requires an adjustment.
c) various inventory issues falling into 2 categories. In the first category are items which the Complainant believes should be linear property, and removed from the building and structure roll and in the second category are abandoned buildings whose value needs to be reduced.
d) Decommissioning liability and its effect on value which negatively affects market value.

[7] The Complainant called 2 witnesses: Mr. Edgar Horner, the Commercial Manager at the Sheerness Generating Station; and Mr. Cameron Hall, Director, Industrial & Complex Property, AEC Property Tax Solutions.

Mr. Edgar Horner

[8] Alberta Power (2000) Ltd. and TransAlta Cogeneration are the equal co-owners of Sheerness. Sheerness operates subject to an environmental approval granted from Albert Environment which requires the licensees to decommission the station shortly after it is shut down. Exhibit C12, page 182 contains an estimate of the costs of decommissioning which would be shared equally by the co-owners. The liability for decommissioning costs is carried in the books and recognized as a future liability. There is not a separate fund for it.

[9] Sheerness is subject to a power purchase arrangement (PPA), which is the instrument the Alberta government developed as part of a strategy to deregulate the electricity market in Alberta. The PPA buyer has the right to the electricity generated by the station from the end of 2000 to the end of 2020. The owners of Sheerness are paid by a calculation under the PPA for having the plant available to the buyer, who will dispatch the plant, based on how they are selling into the electricity market. The owners get a bonus if they exceed the availability targets and conversely get penalized if they drop below the availability targets. The PPA expires in 2020, but the effective unit life recognized in the PPA is 2026.

[10] The first unit at Sheerness was commissioned in 1986. TransAlta and ATCO believed the reserve of coal in the Sheerness mine would fuel the plant until 2026. This was recognized by the Independent Assessment Team (IAT) when the PPA was negotiated, and incorporated into the PPA. Assuming that Sheerness uses 3.1 million tonnes of coal per year, there may be sufficient coal to fuel the plant until 2026. If the usage increases, Sheerness will not make it to 2026 out of the current deposits. Until 2020 (the end of the PPA), the owners have no control over dispatch of the plant, so if Sheerness is dispatched at a higher rate, the coal will run out sooner. Following the PPA, the production will be dictated by market and pool price, along with the costs for coal and other inputs. It is difficult to predict the pool price.

[11] Each year, the owners report to the shareholders regarding remaining reserves based upon a report from the mine operators to the owners. Beyond 2020, Sheerness will conduct routine maintenance, but no major replacement of equipment is being planned for the post PPA period. There may be exceptions if the government implements requirements regarding oxides of nitrogen and sulphur (greenhouse gases).

[12] Mr. Horner has been examining options to extend the life of Sheerness beyond 2026, but to date has not been able to identify anything that would be economical. He has examined bringing in coal from other sources in Alberta, and from outside Alberta. There are questions about the compatibility of this coal. Mr. Horner has asked Sheerness' current supplier for information about their ability to continue to supply beyond run-out of Sheerness coal reserves, to allow operations out to a 50 year life. They have not yet responded, suggesting they are having a difficult time.

[13] In cross-examination, Mr. Horner acknowledged that an additional 8 months' worth of coal has been located outside of the mining area. He also acknowledged that there is a continuing effort to identify other sources of fuel. This work is ongoing, but nothing has been found to date of interest to the management. They continue to look for other opportunities. No final decision about an alternate source of fuel or plant shut down has yet been made. He acknowledged that the environmental approvals could be extended if there was a reason to do so. He also acknowledged that the cost of decommissioning would not be incurred until close to the time that the plant was decommissioned and that no work has been done in this regard because 2026 is a ways away. The instructions regarding the preparation of the cost estimate for decommissioning was for the station as a whole, with buildings and structures broken out as a composite group.

[14] In rebuttal he stated that regarding future coal costs, he had not heard from the current coal supplier. He stated that the costs to bring coal in by rail will be high. He also stated that there was nothing certain about the future price of electricity.

Mr. Cameron Hall

[15] The Complainant sought to qualify Mr. Hall as an expert in the application of the Marshall & Swift manual and in Alberta property assessment. The Respondent objected to him being qualified as an expert on the basis that he did not possess the educational background for an assessor or appraiser, had not taken training, nor did he have the experience.

[16] The CARB did not recognize Mr. Hall as an expert, but permitted him to give his evidence, including his opinions, and the CARB would weigh that evidence and give it the weight that it felt appropriate in the circumstances and in light of all the evidence.

[17] Mr. Hall outlined the previous work done by Shaske & Zeiner in the early 2000s to value the plant. Exhibit C10 is the updated work done by Shaske & Zeiner relating to the costing. Although the value for the facility was increased, the Complainant did not waive the right to argue that the assessment should not increase beyond the amount on the roll.

[18] Mr. Hall explained that linear property and machinery and equipment are different, and that machinery & equipment is a subset of linear, but does not include all of linear property. Everything under machinery and equipment forming an integral part of the operational unit is in an electric power system. Machinery & equipment is half of the linear property, and the other half is that which is not part of the integral part of the operational unit, but which is owned by a "qualifying party". The craneage, conveyor housings, tunnels, cladding and miscellaneous site improvements may not be machinery & equipment, but are linear because they are owned by a "qualifying party". For example, the bumper posts outside of the warehouse building are part of the linear property at a power generation facility because they are part of the linear facility. It is all part of the system and the plant cannot be operated without them.

[19] In relation to cranes, the assessor erred by including in the assessment for buildings and structures cranes which were linear property. In this regard, the Complainant acknowledged that the assessor was recommending the reduction of the assessment for four buildings whose cranes were to be moved to the linear roll. However, the crane in the warehouse is also linear because

the warehouse is owned by what he termed a "qualifying party", and the contents of the warehouse are critical spares. The crane is necessary to move the parts, and is part of the bigger system to generate power. Although power does not run through it, power cannot be generated without it. On cross-examination, Mr. Hall acknowledged that the spare parts contained in the warehouse are chattels and are not assessable by either the linear assessor or the municipal assessor.

[20] In addition, the assessor overvalued the assessment. The base rate/ft^2 includes an amount for cranes (see Exhibit C10, page 27). The \$87.33/ft^2 used by the assessor should be adjusted to remove the double counting for cranes. The Complainant argued that the number to be removed for the absence of cranes is \$9.23/ft^2 based upon the work done by the appraiser Mr. Zeiner for the H.R. Milner Plant. At C12, Tab H, page 41/227, the work done by Mr. Zeiner removing that value can be shown.

[21] The tanks are not buildings, but are structures. They are necessary for the power generation system and fall within that portion of section 284(1)(k) which says that linear property includes the various things owned or operated by a "qualifying party", but not including land or buildings. All of the tanks are required for the operations.

[22] The conveyor houses are an extension of the same principle. They are a necessary part of the machinery and equipment. They are clearly not land or buildings and therefore fall within the definition of linear property. The cladding is a structure. The cladding alone is not a building. The Complainant examined each of the conveyors and argued that all the conveyor housings should not be included under the municipal assessment.

[23] The cladding on the precipitator building is part of the precipitator, even at the bottom. The precipitator would not be built without the cladding, and is 100% machinery & equipment. It is a basic enclosure bolted to a frame, which is considered part of the equipment.

[24] The tunnel is necessary to operate the plant and is not a building, therefore it is part of the linear assessment.

[25] The other site improvements are part of the system to run a power generation plant.

[26] The numbers for fire suppression have been agreed upon by the Complainant, even though the numbers are not entirely correct.

[27] The learning centre and the control building have been abandoned for more than a decade and should be assessed at \$1.00.

[28] The lighting has been overvalued, because the Marshall & Swift Manual provides for "good lighting" (Exhibit C12, Tab J, page 47/227) for an average S class building. That "good" rating is valued at \$16.11/ft^2 (Exhibit C12, Tab J, page 48/227). The minimum fluorescent light " (Exhibit C12, Tab J, page 49/227) is 18 foot candles. The Complainant measured the amount of light using a lumens meter and determined that the average light was only 4.3 foot candles, thereby justifying the removal of \$14.86/ft^2 for the turbine hall due to the reduced level of

lighting. The Complainant also argued for a reduction for electrical since the power plant does not contain power panels, power wiring or industrial piping to the fixtures and equipment. (shown at Exhibit C12, Tab L). The Complainant has argued that for an Average type, S class Heavy (Process) Manufacturing facility, the lighting quality is "good" (Exhibit C12, Tab J, page 47/227). The base cost for the facility is $87.33/ft^2$. The value for "good lighting" is found to be $16.11 /ft^2$ found at Exhibit C12, Tab J, page 48/227. From page 49/227 of Exhibit C12, the Complainant determined that the minimum level of light is 18 foot candles for a warehouse, which is valued at $2.13/ft^2$ (Page 48/227). The Complainant measured the lighting (Exhibit C12, Tab K) and determined that the average at unit 1 was 4.3 foot candles in the boiler house and 9.1 in the turbine hall. For Unit 2, there were 4.1 foot candles in the boiler house and 12.0 in the turbine hall. The overall average was 10.6 foot candles. Using the calculation of 10.6 foot candle/18 foot candle times $2.13/ft^2$ (cost for lighting from Page 48/227), the reduction is $14.86/ft^2$ for lighting. The value should also be reduced to reflect the fact that because Sheerness is a power generating system, it does not have a power drop from the street and no electric panel, since the power comes from the plant. Mr. Hall acknowledged in cross-examination that the assessor had made an adjustment for lighting in his recommendations.

[29] The Complainant argued that the local cost factor which is applied to the replacement cost new established using Marshall & Swift should be the one set out for Medicine Hat. Although the assessor used the province wide location modifier of 1.20, that modifier should only be used if the person costing a facility did not know the location of the building. Costs increase to the north and northwest and are lower in the south and southeast of the province. The local cost modifier of 1.20 is wrong because there is a specific location for the plant, and it is not the same as building in urban Calgary. On cross-examination, he acknowledged that during plant shutdown, workers come from across the province, and that no pieces for Sheerness are manufactured in Medicine Hat.

[30] In relation to the end of life, the coal reserves will be exhausted between 2022 and 2026. The reserve numbers are revised as the information is updated through drilling reports and usage. None of the other alternatives are economic enough to warrant extending the plant life. There is no other use for this special purpose facility. The buildings must be decommissioned and the site returned to its original state. The remaining life is between 11-12 and 14 years. Since the end of life is known, the Marshall & Swift tables found at Exhibit C12, Tab V can be used. When remaining life is more readily established than effective age, as in this case, the right column (shown at page 175/227) is used to determine the effective age. With 14 years left, the effective age is 36 years with a depreciation of 48%. The use of the right side of this table was confirmed in the HR Milner hearing. This analysis for known end of life must be done for all buildings at the facility. The Complainant's calculation for end of life is shown at Exhibit C12, Tab W.

[31] During cross-examination, Mr. Hall indicated that the language of the reports to shareholders is as explicit as it gets regarding the shutdown of the plant in 2026. The reports do not specifically state the plant is shutting down in 2026. No definitive decision has been made to shut down the plant in 2026.

[32] Decommissioning is not an option when the facility shuts down. His view is that the requirement attaches to the fee simple interest, the buildings, machinery & equipment, all

installations and the land. The total cost for decommissioning the plant is $24 million (Exhibit C12, Tab X, page 182/227). Mr. Shymanski indicated the net negative salvage in Schedule C for linear property is -19% and although linear is different, it is done on a cost basis similar to what is before the CARB. The estimated decommissioning numbers are conservative. Of the $8.8 million for the buildings, the Complainant argued that it should be applied in the same way as depreciation applies to the end of its life. There would be zero impact in year one and full impact by the end of its life. Taking into account all of the Complainant's arguments results in a final reqested value of $27,729,366.

[33] On cross-examination, Mr. Hall acknowledged that the owners (ATCO and TransAlta) have received payments for the future costs of decommissioning. He acknowledged that he had no involvement in providing instructions to the people who came up with the costs of decommissioning to identify only reclamation costs for buildings, as defined in the MGA. He had no knowledge of how the site reinstatement costs were derived and could not advise if the costs included costs for equipment inside the buildings.

[34] Mr. Hall indicated that, in relation to the CO_2 Regulations, once Sheerness becomes a merchant plant in 2020, it could run to the end of 50 years and after that, it could run at 9% capacity for an additional 10 years. While Sheerness may not operate, the Regulation permits it to operate.

Respondent

[35] The Respondent confirmed the issues as set out by the Complainant. In response, the Respondent's position was as follows:

a) Although the coal supply will come to an end in 2026, that is not the building's end of life. The Respondent does not believe that it is certain nor more likely than not that the plant will shut in 2026. Therefore the Respondent cannot support a reduced age life based on uncertain future events.
b) The Respondent will make a recommendation for lighting and is not certain that this remains an issue between the parties.
c) In relation to inventory items being linear property, the Respondent argued that the Complainant did not have regard for the definition of electric power system, and the disputed items are structures.
d) In relation to decommissioning, the Respondent urged the CARB to adopt the reasoning from the MD of Greenview Composite Assessment Review Board in relation to the HR Milner power plant which did not make a reduction for future costs.

[36] In addition, the Respondent advised of two further issues. The first was that it would be making a recommendation in relation to fire suppression. The second is that there was an outstanding issue in relation to the local cost modifier for this facility.

[37] The Respondent called 5 witnesses:

a) Mr. Sheldon Fulton
b) Mr. Barry Shymanksi
c) Mr. Dan Driscoll

d) Mr. Kevin Zeiner
e) Mr. Harry Schmidt

Mr. Sheldon Fulton

[38] Mr. Fulton was qualified as an expert in the areas of:

a) The Alberta electricity market, including the structure and intent, the economics and sources of supply of electricity;
b) The structure, intent and application of the PPAs within the electricity market.

[39] The CARB did not qualify him to give opinion evidence about the viability of coal reserves or alternate sources of coal for Sheerness on the basis that he did not have the experience in the issue to provide an expert opinion on that matter. However, the CARB was prepared to hear his evidence and would assign it the weight the CARB felt appropriate.

[40] Mr. Fulton's opinion was that Sheerness had a high probability of being operated until the end of 50 years, the limit imposed by the federal CO_2 Regulations. Mr. Fulton outlined the background of the Sheerness facility describing considerations in relation to the construction of the facility. In 1995, the government deregulated the electricity market for generation and consumption, keeping transmission and distribution regulated. The Power Purchase Arrangements (PPAs) governed the generation of electricity, and the PPA in place for Sheerness governs its current operations, and will until 2020, when the PPA expires. The PPA is a transitional document to move from a regulated to a merchant generating operation.

[41] The Sheerness PPA includes both unit 1 and unit 2. The PPA sets out minimum requirements for Sheerness availability during the year. If Sheerness is not available, the owner can incur penalties. If it is available over the limits, it can generate extra revenue. Each PPA has values for operating costs and minimum payments, etc. as found in the schedules. The PPAs all come from the same basic negotiated arrangement by the Independent Assessment Team (IAT). The IAT did not set the end of life, which was imposed by the AEUB based on other factors.

[42] The PPA for Sheerness ends in 2020, although other PPAs have already expired. Sheerness must examine the following to determine if it can compete after the end of the PPA:

a) Economics of power generation in Alberta – current and beyond 2020
b) Impact of end of PPA and operation as merchant facility
c) Environmental issues affecting coal-based generation
d) Long-term fuel availability - coal reserves

[43] In relation to the economics of Sheerness operations, Mr. Fulton took the CARB through his report which examined Sheerness' utilization and how much revenue it is generating. Over 28 months, unit 1 generated an average of 290 MWs per hour for a total of about 5.9 million MWh in the 28 month period and had a 76% utilization factor. The revenue value averaged $78.41. In aggregate, it was $466 million or $16 million per month. If the average revenue presumed from selling to the hourly market is $78.41 and the average cost is $30/MWh set out in the PPA, it is a margin of approximately $48/hour. The values for unit 2 were approximately the

same. Based upon the margin of approximately $48/MWh, Mr. Fulton felt this was an economic production of electricity and that the owners could replicate this after the end of the PPA. Mr. Fulton cited from the Brattle Group's conclusion about the operation of facilities when their PPAs expire (Exhibit R16 Tab 2).

[44] Mr. Fulton indicated that the PPAs contain a capital recovery charge, one component of which deals with decommissioning. This is the accumulated decommissioning provision. This provision was intended to ensure that there were adequate dollars for decommissioning a regulated facility which came to the end of its life. Consumers were charged a fee which was meant to cover decommissioning. Mr. Fulton indicated that in 2001, there had been decommissioning revenue, collected from consumers of approximately $11 Million. There was also an adjustment for consumer price index, so the value in 2012 is about $20M. The owners are not required to put the funds into a separate fund.

[45] The issue for Sheerness after the end of the PPA will be the fuel source. The current coal supply will provide it with sufficient coal to go past 2020 and perhaps to 2025 or 2026. Mr. Fulton gave evidence that the 2026 date in the PPA came from the depreciation of a regulated unit as agreed to by the AEUB in 1997. While it coincided with the end of coal supply, it was not based on the coal supply.

[46] Mr. Fulton reviewed the memo from Mr. Horner reviewing various options for alternate fuel sources (Exhibit C25, page 2/116), including the costs for the alternate sources, based upon the gigajoules per tonne which they can produce. Mr. Fulton examined the capital costs to obtain coal from other sources, including the cost of rail. Mr. Fulton then examined the revenue to be generated from the sale of that electricity. The forecasted price by AESO is between $91 and $101/MWh. Mr. Fulton believed that at those rates, it would economical to continue to operate Sheerness, even with an alternate source of fuel.

[47] Mr. Fulton provided the following summary of the key points from his testimony:

a) The units at Sheerness were built in a regulated era with regard to generating facilities and are part way through the transition when they become merchant units in 2021. The decision processes and dates are different in a merchant vs. regulated world.
b) He explained the derivation of the PPA. They are an arrangement governing the relationship between the buyer of the generating capacity and the owner of the generating facilities. There are owner costs which can be passed through to the buyer, for example, property taxes. The owners are trying to contain the assessment to deal with what will happen in 2021 when the costs are not passed through to the buyer.
c) The decommissioning is a reserve requirement coming out of a regulated era. About $11M has already been paid by consumers from a regulated perspective in 2001 and the amount is allowed to be collected from the buyer each year to 2020. An additional $10M will be collected by 2020, when the owners will have $32M. How the owners deal with it is their corporate decision, but they have collected the money There is no requirement about when they must decommission, only the need for a plan to put the land back to its original state.

d) The 40 year time frame is the depreciation time frame from the regulated process in the 1997 decision by the Board. Mr. Shymanski's evidence has the actual decision. It was a discussion about how long the depreciation would be. In 2021, it will not matter because all cost recovery and depreciation aspects from the regulated environment will be gone and they will be in a merchant world.
e) The analysis for TransCanada would suggest these units are generating revenue. They have $79/mw hour and as of this morning, the 2013 ISO average is $94. Although consumers hope to see prices go down, the ISO is suggesting the $70-90 price range will continue well into the future.
f) In 2021, Sheerness becomes a merchant facility, which is different from a regulated facility. There are different actions with regard to their status.
g) The CO2 regulations affect the operations and whether the 50 year timeframe comes into effect. The Regulations would make 2036 for Sheerness Unit 1 and the question is whether the owners can decouple the 2 units and get another 4 years from Unit 2. 2036 is the target date arising from the Regulation.
h) There is a concern about coal supply. The owners need to figure out where to get it, but the owners are well versed in how to source supply electricity and make money. Both owners compete in merchant supply. Both will be around in 2021 and will compete to the best extent possible. There is no reason to believe they will back off the opportunity.
i) The owners can source coal in at about $30/MWh based upon the evidence the Complainant has provided. That compares favourably to the lowest cost to convert to gas. The only cheaper source is co-gen.
j) The most probable end of life will be driven by CO2 regulations in 2036.

Mr. Barry Shymanski

[48] Mr. Shymanski was qualified as an expert in depreciation in utility proceedings and in the depreciation tables found in the Linear Property Minister's Guidelines.

[49] Mr. Shymanski advised the CARB that his sole purpose is to clarify his testimony from the hearing in Greenview and that he took objection to the Complainant's restatement of his evidence from the HR Milner hearing in Greenview in 2013. He clarified that the -19% is a number used to extract a reduction in assessment value for linear property, but cannot be used in the manner argued in Exhibit C12.

[50] He described 3 reasons for a plant to retire:

a) physical – the plant wears out;
b) functional - the facilities are not able to provide the service, for example, obsolescence; and
c) economic – there is a more economic way to operate.

[51] These factors are considered when one looks at net negative salvage. When the schedules C and D (Exhibit R18, Tab D) for linear property were created, there was input from municipalities, industry and government. Imbedded in the Schedule C table for all power plants are amounts for net negative salvage which are not an exact mirror from Alberta Energy and

Utilities Board Decision U97065 (Exhibit R18, Tab D), but which was an attempt to reflect that decision.

[52] Based on government policy, there was an immediately reduction for depreciation from 100% to 80%, and there was a floor of 20% for depreciation.

Mr. Dan Driscoll

[53] The Respondent sought to quality Mr. Driscoll as an expert in the areas of assessment of linear property and the identification of linear property for the purpose of assessment and what constitutes linear property. His qualification was challenged by the Complainant on the basis that Mr. Driscoll was not an independent witness but was advancing the position of the Designated Linear Assessor. The CARB determined that it would not qualify Mr. Driscoll as an expert. This determination was made due to the concerns raised by the Complainant regarding Mr. Driscoll's independence. The CARB had no concerns about his background, knowledge or experience. The CARB decided to hear his evidence and reserved the right to weight and accept it as it saw fit, since the CARB is not bound by the strict rules of evidence.

[54] Mr. Driscoll took the CARB through the various definitions in the MGA and MRAT, including property, improvements, structures and machinery & equipment. He spent a considerable amount of time on the definition of linear property, and how that compares to machinery and equipment. He took the CARB through the process for assessment found in section 297 and forward.

[55] Both property and linear property have electric power systems, and the assessments for each must be done by the appropriate assessor. Electric power systems are defined in the MGA and must be a system intended for or used in the generation, transmission, distribution or sale of electricity. When generation became deregulated, municipalities approached Municipal Affairs, and the result was the passage of the Extension of Linear Property Regulation, which indicated that linear property does not include self-use power and micro generation. The distinction is not the "qualifying party" as indicated by the Complainant, but rather is the facility.

[56] On this basis, the inventory items identified by the Complainant as linear are not. The Cranes for the warehouse are not linear since the inventory is not linear. The tanks are not used for the generation of electricity, nor are the fence, light standards or bumper posts or paving. The conveyor housings are used for access. The cladding of the precipitator buildings at the top is linear, but on the bottom is a structure. The enclosure is property: it is lit, people get out of the weather. The tunnel provides space for staff to work, and to not be affected by the weather. It is similar to a building, but just has a different shape.

[57] If there are structures associated with the generation of electric power, they are assessed as linear property. If they are not associated with the generation of electric power, then they are assessed as property. It does not matter if they have electricity running through them. The question is whether they are associated with the generation of electric power. For example, the smoke stack is part of the electric power system, but has no electricity in it.

[58] The wording in the definition of machinery & equipment says that the "materials, etc." must form "an integral part of an operational unit intended for or used in…"

> *"machinery and equipment" means* materials, devices, fittings, installations, appliances, apparatus and tanks other than tanks used exclusively for storage, including supporting foundations and footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in…

[59] By contrast, the definition of electric power system says "intended for or used in". Mr. Hall has stated that all structures are linear. Mr. Driscoll's position is that only structures intended for or used in the generation of electricity are linear, and the others are assessed by the municipal assessors. Mr. Driscoll made no comment on whether the assessment value was correct, and left that for the Respondent's assessor to provide evidence on.

Mr. Kevin Zeiner

[60] Mr. Zeiner was qualified as an expert to give opinion evidence as an appraiser on market value.

[61] Mr. Zeiner took the CARB through the Respondent's recommendations as outlined in Exhibit R31 and then in R53. The recommendations included reductions to:

a) remove the value of cranes which should have been assessed as linear property;
b) reduce the value to reflect the absence of fire suppression equipment in certain buildings;
c) adjust the former learning centre to reflect an appropriate level of depreciation; and
d) correct the area of the lower half of the cladding of the precipitator enclosure.

[62] Mr. Zeiner disagreed with the Complainant's position regarding the reduction from the base cost for an absent crane. He agreed with the base cost of $\$87.33/ft^2$. However, he disagreed that the base cost embedded an amount for cranes. He stated that cranes are a specific and additional item as shown in C24, Tab G, page 42/111. It is not possible to apply a generic amount for the absence of a crane because the per square footage value will change depending upon the tonnage, span and runway of the crane. The $9.23 from the HR Milner Plant came from specific assumptions made for that particular building. The value of the cranes requires modification for building area, story height, etc. Since the building at the HR Milner Plant has a different floor area, the values are going to be inaccurate.

[63] The value of the tanks was included at the direction of the assessor.

[64] For the conveyor housings, he costed only the shell of the enclosure. For the precipitator enclosure, the assessment is only for the metal panelling around the bottom of the precipitator. The tunnel runs under a roadway and he costed only the tunnel structure. It was costed based on a steel culvert, then factored up for its large size. The assessor directed him to include the value of the paving, light standards, etc. For the 2 abandoned buildings, the costs were changed to reflect the change of use and depreciation.

[65] In relation to the requested adjustment for lighting, he stated that there is no correlation between the quality of the building (a "good" building") and the quality of the lighting. Columns 1-4 at page 48/227, Tab J, Exhibit C12 relate to the qualities of building types. Two is average, 3 is good and 4 is excellent. Sheerness is "average", which means it should be in column 2 with a value of $\$13.07/ft^2$. Mr. Zeiner indicated that one cannot change the type of building to adjust the value, as has been suggested by the Complainant. He indicated that the adjustment is for electrical and lighting, and there is no specific adjustment for power. The lighting adjustment from Paintearth was applied to Sheerness given the similarity of plants.

[66] The local cost modifier is based either upon the modifier for one of 6 locations in Alberta, or the Alberta-wide modifier. Calgary and Red Deer are closer to Sheerness than Medicine Hat. The modifier reflects the fact that workers and materials for the facility will have to come from other locations. The modifier for a facility outside of the 6 noted ones is correctly identified as 1.20.

[67] In relation to depreciation, Mr. Zeiner stated that if coal reserves run out in 14 years, it is too far ahead to make adjustments for depreciation. Those adjustments should be made closer to 2026. Mr. Zeiner stated that the method of attributing depreciation, starting from the right table at Exhibit C12, Schedule V, page 175/227, is used rarely, and in his experience, has never been used. He stated this distorts the effective age. He stated that the cost of decommissioning has nothing to do with the rate at which a building depreciates.

Mr. Harry Schmidt

[68] Mr. Schmidt was qualified as an expert in the assessment of special purpose properties. Mr. Schmidt prepared the 2011 assessment under appeal. He provided the CARB with an overview of the Sheerness generating station. The assessment value in Exhibit R20, Tab 2 is set at $59,137,270 using a Marshall & Swift valuation.

[69] He outlined the meetings held between the parties and the issues raised. He took the board through the photos contained at Exhibit R20, Tab 5.

[70] He concurred with the recommendations made by Mr. Zeiner and has relied upon Mr. Zeiner's analysis. In regard to decommissioning, there is no set date for decommissioning and no technical information available about its cost. The Respondent is not prepared to reduce the assessment to reflect the future cost of decommissioning because the supply of coal is too speculative as of July 1, 2011.

Requested Increase to Assessment

[71] Although the Respondent had requested an increase to the assessment, on September 13, 2013, the last day of the hearing, the Court of Queen's Bench issued a decision in *Edmonton East (Capilano) Shopping Centres Limited v Edmonton, (City)*, 2013 ABQB 526 ("*East Capilano*"). The Respondent later provided notice to the CARB (Exhibit R57) that in light of that decision, the Respondent was asking the CARB to confirm the assessment.

DECISION AND REASONS

[72] The assessment shall be changed as follows:

		Source
Original 2011 Assessment Value	$59,137,273	Exhibit R20, Tab 2
Add		
Building #31 Explosive Buildings (Depreciated Replacement Cost)	$1,000	Exhibit R20, Tab 5, photos 53 and 54 Exhibit R31, Page 4 Exhibit R53
Building #32 ATCO Trailers (Depreciated Replacement Cost)	$593,929	Exhibit R20, Tab 5, photo 55 Exhibit R31, Page 4 Exhibit R53
Subtotal	$59,732,202.00	
Subtract from Subtotal		
Building #1 Turbine House – Crane to be part of linear	$729,679*	Exhibits R14, R31 Page1, Exhibit R53
Building #1 Boiler house – Crane to be part of linear Overhead lighting adjustment	$1,121,612*	Exhibits R14, R31, Page 1 R53
Building #1 – Boiler house Workshop Crane to be part of linear	$149,032*	Exhibits R14, R31, Page 4 R53
Building #2 Precipitator Enclosures adjustment	$348,965*	Exhibit R53
Building #6 Cooling Water Pump house Crane to be part of linear	$168,384*	Exhibits R14, R31, Page 4 R53
Building #7 Former Learning Centre Depreciation	$11,048*	Exhibits R14, R31, Page 4 R53
Building #28 Fire Suppression adjustment	$312,902*	Exhibit R31
Subtotal	$2,841,622	
Revised 2011 Assessment	**$56,890,580****	

* Depreciated value
** Replacement Cost New

[73] The CARB retains jurisdiction to deal with any issues arising from its determination of the 2011 assessment.

Reasons

[74] The Sheerness thermal electric power generation station ("Sheerness") is a coal-fired steam-turbine power generation plant located 31 kilometers south of Hanna, Alberta at the Sheerness coal deposit.

[75] The Complainant has filed an appeal in relation to the 2011 assessment for the 2012 tax year seeking a reduction of the assessment. The Complainant listed a number of areas in which it felt that the assessment was incorrect. These can be restated as follows:

Issue 1

[76] Are the below listed inventory items (improvements) structures, and therefore fall to be assessed by the municipal assessor, or are they linear property and therefore fall to be assessed by the linear assessor?

a) Cranage;
b) Tanks;
c) Conveyor Housings;
d) Cladding on Machinery & Equipment (Precipitator Cladding);
e) Tunnels, and,
f) Chain link fencing, light standards, bumper posts, and paving.

Issue 2

[77] Should the assessment be reduced due to the lack of craneways?

Issue 3

[78] Should the assessment be reduced due to the quality of the lighting?

Issue 4

[79] Should the assessment be reduced due to the lack of fire suppression in some of the buildings?

Issue 5

[80] Should the assessment be reduced because the assessor used an inappropriate location modifier when using Marshall & Swift? (What is the appropriate location modifier?)

Issue 6

[81] Does the future cost of decommissioning affect the assessment as of July 1, 2011?

Issue 7

[82] What is the appropriate depreciation for Sheerness?

a) What effect, if any, does the end of the coal supply at the Sheerness mine have on the end of life of Sheerness?
b) When is the end of life, and what impact does that have on depreciation?

Issue 8

[83] Can the assessor increase the assessment from $59,137,270 to $61,137,829.00 as set out in Exhibit R53?

[84] The CARB now turns to each issue in turn.

Issue 1

[85] **Are the below listed inventory items (improvements) structures, and therefore fall to be assessed by the municipal assessor, or are they linear property and therefore fall to be assessed by the linear assessor?**

a) Cranage;
b) Tanks;
c) Conveyor Housings;
d) Cladding on Machinery & Equipment (Precipitator Cladding);
e) Tunnels, and,
f) Chain link fencing, light standards, bumper posts, and paving.

[86] The answer to the question of whether the listed inventory items are improvements within the jurisdiction of the municipal assessor requires the CARB to examine the provisions of the MGA, and the provisions of MRAT and the Micro-Generation Regulation, A.R. 207/2012 to determine what falls within the jurisdiction of the municipal assessor and what falls outside his jurisdiction.

[87] In this case, the Complainant has argued that the inventory items set out at page 12 of Exhibit C12 are linear property and should be removed from the assessment in question. The Complainant argued that the improvements at Sheerness were, by legislative and regulatory definition, either:

a) Buildings forming part of the improvements that are Structures and Non-linear Property (the subject of this valuation), or,
b) A wide variety of other things that form part of Linear Property (and must be excluded from this valuation).

[88] The Complainant argued that all cranes at Sheerness are linear property even if they were used for maintenance and stock handling, because maintenance and handling are an integral part of the ongoing operation of Sheerness. Since Sheerness could not operate without maintenance and handling, these were integral to the operation and fell within the definition of linear property. The Complainant argued that the definition of linear property excluded only land and buildings, and any structures which were not a building, by definition, fell within linear property.

[89] The Respondent argued that the definition of "electric power system" (one of the elements of linear property) governs the issue. "Electric power system" is defined as:

> (g) "electric power system" means a system intended for or used in generation, transmission, distribution or sale of electricity. (MGA s 284(1))

[90] The Respondent argued that since the electricity produced at Sheerness is sold into the grid, the inventory items which are intended for or used in the generation, transmission, distribution or sale of electricity are Linear Property. If the inventory was not intended for or

used in the generation[2] of electricity it was to be excluded from the Linear Property assessment. The Respondent's position was that the legislation required the following inventory items to be excluded:

a) Land – by virtue of MGA s284(1)(k)(i)
b) Buildings - by virtue of MGA s284(1)(k)(i)
c) Inventory not intended for or used in the generation, transmission, distribution or sale of electricity – by virtue of MGA s284(1)(g)
d) Inventory used for self-use power - by virtue of AR207/2012
e) Inventory used for Micro generation by virtue of AR207/2012

[91] As stated in County of Paintearth No. 18 CARB Board Order Corrected 2012-2, at paragraphs 62-64 (Exhibit C24, Tab I), the jurisdiction of this CARB is found under section 467(1) of the MGA, and it is to make a determination to change, or not to change, the assessment under complaint. The onus lies with the Complainant to justify the changes which it seeks.

[92] The CARB first notes that Section 285 of the MGA establishes the municipality's responsibility to prepare an assessment for each property in the municipality, except for linear.

> *285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.*

[93] Section 289 of the MGA requires the municipal assessor to prepare an assessment for all property in the municipality, except for linear property.

> *289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.*

[94] There is no dispute between the parties that "property" means land, improvements, or land and improvements (section 284(1)(r) MGA). The dispute centres on whether the identified inventory items fall within linear property.

[95] This CARB has examined the decision from County of Paintearth No. 18, referenced above in paragraph 91, where the subject matter of the complaint was the Battle River Generating Station. In that case, one of the questions before that CARB related to whether the structure (the exterior of the turbine hall and boiler house) was part of the linear property, or part of the property over which the municipal assessor had jurisdiction.

[96] In the matter before this CARB, the subject matter of the dispute is different, in that this CARB is asked to rule on whether cranes, tanks, etc. are to be assessed by the municipal assessor. The issue relating to the precipitator cladding is similar to the issue before the County of Paintearth CARB, although the facts before this CARB are different.

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[2] Sheerness is a generating station which sells its electricity onto the grid. This means that "generation" and "sale" apply in this question. Although section 284(1)(g) speaks of" transmission, distribution or sale of electricity", the CARB will refer solely to "generation" to encompass the generation and sale of electricity conducted at Sheerness.

[97] The CARB notes that linear property is defined in section 284(1)(k) of the MGA as follows:

> *(k) "linear property" means*
>
> *(i) electric power systems, including structures, installations, materials, devices, fittings, apparatus, appliances and machinery and equipment, owned or operated by a person whose rates are controlled or set by the Alberta Utilities Commission or by a municipality or under the Small Power Research and Development Act, but not including land or buildings,*
> . . .

[98] The CARB notes and agrees with the refinement of the definition as set out at Exhibit R19, page 11 concerning the implication of the *Micro-Generation Regulation*, A.R. 27/2008. Incorporating that regulation into section 284(1)(k) would result in the following definition of linear property for electric power systems:

> i) electric power systems, including structures, installations, materials, devices, fittings, apparatus, appliances and machinery and equipment,...
>
> ...intended for or used in the generation of electricity owned or operated by a person whose rates are not controlled or set by the Alberta Utilities Commission or by a municipality or under the Small Power Research and Development Act, but not including, unless the Minister otherwise directs,
>
> (a) an electric power system that is owned or operated by a person generating or proposing to generate electricity solely for the person's own use, or
> (b) a micro-generation generating unit as defined in the Micro-Generation Regulation (AR 27/2008)
>
> but not including land or buildings.

[99] Incorporating the definition of "electric power systems" from section 284(1)(g) of the MGA into the above definition of "linear property" results in the following definition:

> i) a system intended for or used in generation, . . . or sale of electricity, including structures, installations, materials, devices, fittings, apparatus, appliances and machinery and equipment,...
>
> ...intended for or used in the generation of electricity owned or operated by a person whose rates are not controlled or set by the Alberta Utilities Commission or by a municipality or under the Small Power Research and Development Act, but not including, unless the Minister otherwise directs,

(a) an electric power system that is owned or operated by a person generating or proposing to generate electricity solely for the person's own use, or
(b) a micro-generation generating unit as defined in the Micro-Generation Regulation (AR 27/2008)

but not including land or buildings.

[100] Having regard for this definition, the CARB is of the view that a critical component in the determination of whether the listed inventory items should be excluded from the jurisdiction of the municipal assessor is whether they are intended for or used in the generation of electricity, which, in this case, is sold onto the grid. If the inventory item is intended for or used in the generation of electricity, it then falls within the definition of linear property, which is outside the jurisdiction of the municipal assessor.

[101] Before embarking upon an examination of the items listed by the Complainant, it is necessary to examine the words used in the definition of electric power systems. The words are "intended for or used in". Since the drafters have used separate words, the question is what is the distinction between "intended for" and "used in". Neither party placed much emphasis on this distinction with the Complainant arguing that the contested items were part of the whole "system", and the Respondent arguing that the contested items were not used in the generation of electricity.

[102] If one were to take a literal meaning of the words "intended for", then the items stored in the warehouse (Building #11) would be assessed as linear property, even prior to their installation because they are stored for their future intended use for electric power generation. It was uncontested by the parties that the items stored in the warehouse were not assessed at all, since they were chattels. In the absence of any authority shown to the CARB to justify such an interpretation, the CARB believes that such a conclusion is beyond what is meant by "intended for".

[103] The CARB turns to each of the items listed by the Complainant in light of this definition.

Cranes

[104] The Complainant has argued that all cranes are linear property, including the crane in the materials warehouse, because without the ability to handle materials, electricity could not be generated. The Respondent has recommended an adjustment to the original assessment relating to the cranes in the turbine house, the boiler house, the boiler house workshop and the cooling water pump house. The Respondent's position is that these cranes are associated with the generation of electricity and therefore should be removed from the assessment.

[105] The CARB notes that the Complainant took no issue with the Respondent's position in relation to these 4 adjustments. These four cranes are large cranes ranging from a capacity of 15 tonnes to 30 tonnes. The CARB agrees with the interpretation advanced by the Respondent. It accepts the recommendations put forward by the Respondent for the cranes in these buildings. This has been set out in paragraph 72.

[106] What remains at issue is the crane in the materials warehouse, which has a 5 tonne capacity. For this item, the CARB is of the view that this properly remains to be assessed by the municipal assessor. The CARB notes that the crane is in a building which is a warehouse for materials inventory, in essence, spare parts. The CARB notes that evidence was that the inventory held in the warehouse, *once they are installed in a facility which generates electricity*, would become part of the linear property. However, at the current time, the inventory in the warehouse is just that, inventory, and it is not linear property. These spare parts are not assessed, and the crane that moves these parts cannot be assessed as linear property. The crane is not used in the generation of electricity. There was no evidence which linked this crane to any power generating equipment. The crane is not "intended for" the generation of electricity because its future purpose remains moving inventory items, and there was no evidence that its use would change in the future.

[107] Although the Complainant argued that the crane (and other items) were all part of a system for the generation of electricity, the Complainant did not provide any definition of system. The failure to provide a definition made it difficult for the CARB to assess the Complainant's argument, although the CARB has examined this argument. If one defines "system" as "a set of interacting or interdependent components forming an integrated whole"` (merriamwebster.com/dictionary/system), then the crane is not part of that system, as it is not interacting with or interdependent upon any components which generate electricity. There is no interconnectivity with the crane and the generation of electricity. There was no evidence before the CARB that the crane affected or controlled the quantity of electricity output, the quality of electricity output, or was attached to the system by government regulation (eg environmental controls). For these reasons, the CARB rejects the argument that the crane is part of the "system" of generating electricity.

Tanks

[108] The Complainant argued that the various inventoried tanks were "other things" that were structures and not buildings. As a result, the Complainant argued that all were Linear Property and all should be removed from the non-linear improvement assessment inventory being valued.

[109] The CARB notes that there are four different tanks listed in Exhibit C12 and shown in Exhibit R20:

a) Vehicle fuel tank – Exhibit R20, Tab 6, photo 50
b) Diesel tank – Exhibit R20, Tab 6, photo 89
c) Waste Oil tank – Exhibit R20, Tab 6, photo 51
d) Coal Plant Services Diesel tank – Exhibit R20, Tab 6, photo 88

[110] The evidence before the CARB was that the vehicle fuel tank, the diesel tank and the coal plant services diesel tank were used to fuel vehicles used on site. The CARB noted that the argument was that these were part of one "system" which was for the generation of electricity. However, the evidence was that the fuel contained within these tanks was not used for the generation of electricity (the boilers at Sheerness are coal fired), but are used to fuel the trucks and vehicles used on site. As set out in paragraph 107, the CARB does not agree that the tanks form part of the system of generating electricity.

[111] The CARB believes that the definition of electric power system cannot be extended to include the tanks fueling vehicles which travel over the work site. The connection between the fuel and the generation of electricity is, in the opinion of the CARB, too distant.

[112] The CARB the examined the waste oil tank to determine if this tank was an integral part of the system intended for or used in the generation of electricity. While there were some references to the fact that there are lubricants in various pieces of equipment, the CARB had no evidence before it that supported the conclusion that the waste oil tank was an integral part of the system for generating electricity. Due to this lack of evidence, the CARB did not direct a change to the assessment for the waste oil tank.

Conveyor Housings
[113] The Complainant argued that the various conveyor housings listed in Exhibit C10, at pages 190 to 194, are linear property since they are structures which are ("other things") that are not Buildings and, therefore, are Linear Property. These include:

a) ROM Conveyor B-3
b) Bottom Ash Overhead Conveyor B-17
c) Fly ash & Bottom Ash Overhead Conveyor B-17
d) Fly ash & Bottom Ash Underground Conveyor B-18
e) Coal Reclaim Conveyor B-145 and
f) Coal Feed Conveyors.

[114] The CARB has rejected the interpretation advanced by the Complainant. It has not been convinced by the evidence presented that the conveyor housings are integral to the generation of electricity. There was no evidence before the CARB which indicated that electricity could not be generated without the conveyor housings. Indeed, there was no evidence at all before the CARB about what might occur without these housings. In the absence of any evidence supporting the connection of the housings to the generation of electricity, the CARB notes that, as in the County of Paintearth No. 18 CARB Board Order Corrected 2012-2 at paragraph 86, the conveyor housings function like a building, and likely function, at least in part, to protect the equipment from the elements.

[115] Without evidence linking this housing to the generation of electricity, the CARB has insufficient evidence upon which to change the assessment for these conveyor housings.

Cladding on Machinery & Equipment (Precipitator Cladding);
[116] The Complainant argued that the cladding for the entirety of the precipitator building was linear property on the basis that it was a structure that was not a building, and therefore it fell within the definition of linear property.

[117] The Respondent recommended a reduction to the precipitator cladding on the basis that the municipal assessment should have only included the cladding on the lower 31 feet of the building. The assessment correctly calculated the costing for the side walls (31 ft. x. 155 ft.). However, for the two end walls, the entirety of the side (from top to bottom) were included. The

assessment should have only included the lower 31 feet. As a result, the Respondent recommended that the municipal assessment be reduced by $348,965.00 to correct this error.

[118] The photographs at Exhibit R20, Tab 6, pages 64 to 74 show both the inside and the outside of the precipitator building. The CARB accepts the evidence of the Complainant that the top of the precipitator building is integral to the operation of the unit and should be removed from the assessment. However, it notes that the Respondent accepts this position for the upper half of the building, and has recommended a change to the assessment due to a mistake in the calculation of the size. Therefore, it appears that the only issue in relation to the precipitator cladding is for the lower half. The Complainant argues it is a part of the entire system of linear property, while the Respondent argued that the lower half is a structure falling within the jurisdiction of the municipal assessor.

[119] The CARB has had regard for the evidence of the parties, and notes that the equipment appears to be attached to the top of the precipitator. The CARB believes that the cladding at the bottom of the precipitator encloses the structures holding up the precipitator, but its only function appears to be for the protection of the workers inside, functioning like a building, as referenced in paragraph 86 of the Paintearth decision, cited above.

[120] The CARB does not accept that the lower half of the cladding was integral to the operation of the precipitator, and therefore will not change the assessment, except as recommended by the Respondent.

Tunnels

[121] The Complainant argued that the tunnel was a structure which was not a building, and which should therefore be removed from the assessment.

[122] The evidence before the CARB was that the tunnels cover the conveyors, and provide access to them for the purposes of maintenance. The photos contained in Exhibit R20, Tab 5, pages 33-34 and 97-100 showed the tunnels as containing lighting and heating. Although they contain the conveyors, the tunnels themselves appear to function in the same manner as a building – for the protection of the equipment and workers. There was no evidence before the CARB that the tunnels are necessary for the operation of the generating station and as such, the CARB is not prepared to change the assessment. Although not raised by the parties, Section 616(a.1) of the MGA defines "building" as including "*anything constructed or placed on, in, over or under land, but does not include a highway or road or a bridge that forms part of a highway or road*". The CARB recognizes that the definition applies to Part 17, but does support the CARB's view that the tunnels are buildings.

Chain link fencing, light standards, bumper posts, and paving

[123] The Complainant argued that the light standards, bumper posts and paving were all part of the system for generating electricity and therefore should be removed from the assessment. The Respondent argued that they were not intended for or used in the generation of electricity and should remain on the assessment.

[124] The CARB is not prepared to accept the Complainant's argument in relation to these items. As set out in paragraph 107, the CARB does not agree that these inventory items form part of the system of generating electricity

[125] There was no evidence before the CARB that Sheerness would not be able to generate electricity without these items on site. The CARB is of the view that there is no connection between these items and the generation of electricity. To accept the Complainant's argument would mean that anything placed on the Sheerness site would form part of the "system" of generating electricity. The CARB is not prepared to accept such a broad conclusion without evidence of some tie-in between the item and the generation of electricity. Therefore the CARB rejects this portion of the complaint.

Issue 2

[126] **Should the assessment be reduced due to the lack of craneways?**

[127] The Complainant argued that the assessor erred in two ways in relation to the assessment for cranes. The first that the cranes were linear property and should be removed from the assessment has been dealt with under issue #1 above. The Complainant also alleges that where the appraiser has used a base rate that includes craneways, the value of the craneways embedded in the base rate must also be removed as the craneways are also Linear Property. The Complainant relied upon the actions of the appraiser at the HR Milner plant, citing the evidence of such a reduction as evidenced in Exhibits C54 and C55. The Complainant argued that the base rate of $87.33 used by the appraiser included a value for cranes, and that for the following buildings, the rate should be reduced to reflect that there are no cranes.

Water Treatment Plant
Turbine Hall Annex

(For the other buildings listed in Exhibit C12 – the Assessor removed the value of the cranes from the assessment under appeal, so the cranes in those buildings would be part of linear property.)

[128] The Complainant argued that the value of the reduction should be the value deducted by the appraiser in his valuation of the HR Milner Power plant ($9.23/ft^2), as shown at Exhibit C12, Schedule H, page 43/227.

[129] The CARB notes that Exhibit C12, Schedule H, page 41/227 sets out an excerpt for the calculator method for Industrials, Heavy (Process) Manufacturing (495) from the Marshall & Swift manual. For an S class, average building, the value is set out as $87.33 per square foot. However, the CARB also notes that immediately below the table is the following notation:

CRANES - Material-handling systems are not included. See Section 58.

[130] The CARB was provided with no evidence to reconcile the Complainant's argument that the value of an Average, S Class building includes a component for cranes, in light of the above notation, which appears to specifically negate that argument. A craneway is part fof the material

handling system which Marshall & Swift specifically indicates is not included. The CARB, therefore, does not accept the argument of the Complainant in relation to the need to remove an amount for craneways from the base cost of $87.33/ft^2$ as set out in Marshall & Swift.

[131] Although the CARB believes that this is a full answer to the argument advanced by the Complainant, the CARB has gone on to examine the balance of the argument advanced by the Complainant to reduce the base cost from $87.33 /ft^2$ due to the absence of a craneway. The CARB notes that accepting the Complainant's argument would lead to very practical difficulties in establishing the value of the non-existent crane. The CARB accepts the evidence of Mr. Zeiner regarding the difficulties of calculating the value of a reduction for a non-existent craneway. There is no information about the size of the crane, the length of the craneways, or any other information which would be used to calculate a value. The value for the reduction would be, at best, a guess.

[132] The CARB also has concerns about accepting the reduction used at the HR Milner plant for Sheerness. The sizes of the buildings are very different, for example, the water treatment plant (shown at Exhibit C10, page 15) is 34,632 ft^2, and the turbine hall annex (shown at Exhibit C10, page 39) is 57,904 ft^2. By contrast, the size of the HR Milner Pulverizer building is 5,278 ft^2. Depending upon the assumptions made about the directions of the cranes, the values can vary substantially and then the cost per square foot can also vary dramatically as the smaller the building, the bigger the value per ft^2. The CARB also notes that in Exhibit C24, Tab G, page 42/111, Section 58 of the Marshall & Swift Manual referred to above costs craneways on a $/lineal foot basis, not $/ft^2$. The CARB is not convinced by the Complainant's evidence that the value of $9.23/ft^2$ is a correct valuation for Sheerness. The CARB is not prepared to change the value of $87.33/ft^2$ used by the appraiser.

Issue 3

[133] **Should the assessment be reduced due to the quality of the lighting?**

[134] The CARB notes that the assessor made a recommendation to reduce the assessment to reflect the level of lighting at the Sheerness plant. However, the Complainant argues for a reduction due to both the difference in lighting at Sheerness and the lack of power leads to the building.

[135] The CARB is not convinced by the Complainant's interpretation of the Marshall & Swift manual. There was no evidence provided to the CARB to show a link between the 18 foot candles referenced for light industrial buildings and the reference in Marshall & Swift for "good lighting" in an Average quality S Class building.

[136] The "base" level of lighting determined by the Complainant is located at page 49/227, Tab J of Exhibit C12 – but this reference is for a light industrial/warehouse shell building (454). Sheerness is a power generating facility, which falls within Industrials, Heavy (Process) Manufacturing (495). The Complainant indicated that the only reference to the amount of foot candles in Marshall & Swift is at page 49/227. However, the CARB heard no evidence which suggested that the lighting baseline required for a power generation station is 18 foot candles. There was no evidence to suggest that 18 foot candles was required to operate a power

generation station. In fact, the evidence suggests the opposite – even without 18 foot candles, a power generation station can continue to operate, as evidenced by the fact that the Sheerness facility has been in operation for many years with the current level of lighting. The CARB accepts the evidence of the Respondent that it is not appropriate to change the building type to select a different rate.

[137] The CARB noted that the interpretation by the Complainant would shift the quality of Sheerness from an "average" quality, to a "good" quality to capture the $\$16.11/ft^2$ for lighting costs. The CARB prefers the evidence presented by the Respondent that if the building quality is "average", then the values should be taken from the "average" column, and not shifted to capture a different value. Moreover, the CARB accepts the Respondent's argument that there is no correlation between a "good building" and the quality of the lighting, as evidenced by the fact that for the S Class building, of Average quality, there is a reference to "good lighting". The CARB agrees that the descriptions are overall descriptions of the items set out.

[138] The evidence in support of the reduction for lighting relies upon measurements taken in Sheerness Unit 1 Turbine House and Boiler House, and Sheerness Unit 2 Turbine House and Boiler House (Exhibit C12, Tab K, pages 51-53/227). However, the Complainant has applied the reduction to the Water Treatment Plant, the Turbine Hall Annex and the Boilerhouse Workshop, for which no evidence has been presented. Even if the CARB were prepared to accept the Complainant's argument in relation to the issue of lighting, the CARB would not be prepared to apply the reduction for buildings for which no evidence had been presented.

[139] The CARB is prepared to accept the reduction for lighting recommended by the Respondent. This reduction reflects the fact that in the Paintearth appeal, the assessor had made an adjustment for lighting, and the Respondent here was prepared to apply it to Sheerness due to the similarity of plants.

Issue 4

[140] **Should the assessment be reduced due to the lack of fire suppression in some of the buildings?**

[141] The Respondent recommended changes to the assessment in relation to the lack of fire suppression in certain of the buildings. The Complainant did not object to the Respondent's recommendation.

[142] In light of the agreement of the parties, the CARB is prepared to accept the Respondent's recommendation to remove the sum of $312,902 from the depreciated replacement cost to deal with the issue of fire suppression. For greater clarity, this is identified as Building #28 in Exhibit R53.

Issue 5

[143] **Should the assessment be reduced because the assessor used an inappropriate location modifier when using Marshall & Swift? (What is the appropriate location modifier?)**

[144] The Complainant argued that the assessor had erred in applying the local cost adjustment using the Marshall & Swift factor of 1.20 (Exhibit C12, Tab M, page 58/227) (called during the hearing the "Alberta-wide factor"). The Complainant argued for a factor of 1.16, which is the factor for Medicine Hat.

[145] The Respondent argued that the Alberta-wide factor was the most appropriate. Marshall & Swift set out factors for six locations in the province, and if the location in question is not within one of those factors, the Alberta-wide factor applies. If one were to look to the closest geographical location, Sheerness is located closer to Red Deer (Factor 1.21) or Calgary (Factor 1.21) than it is to Medicine Hat (Factor 1.16).

[146] The CARB finds that the appropriate local modifier is the Alberta-wide modifier of 1.20. The evidence before the CARB showed that there were 6 locations within Alberta with a separate local modifier, and Sheerness (just outside of Hanna) was not one of them. As a result, the CARB believes that the most appropriate modifier should be the Alberta-wide factor on the basis that the location is either in one of the listed six, or it falls within the general modifier.

Issue 6

[147] **Does the future cost of decommissioning affect the assessment as of July 1, 2011?**

[148] The Complainant argued that the assessment of the Sheerness facility should be reduced to reflect the cost of decommissioning. The CARB notes that the evidence before it was that the price paid for electricity to the owners of Sheerness includes a component for the cost of decommissioning. Further, the owners have "booked" the liability for decommissioning, choosing not to create a separate fund to be used for decommissioning, as has been done at the HR Milner Plant. The CARB understood this evidence as being a balance sheet entry. Further, the CARB noted that Mr. Horner indicated that the owners would not be spending money for decommissioning until close to the time of the decommissioning.

[149] The argument before the CARB is that of the net cost, $8,888,296 attaches to the various plant buildings (exhibit C12, page 55). Neither of the Complainant's witnesses gave specific instructions about what was to be included as a "building", nor was any direction given in relation to the definition of a building under the MGA to those preparing the decommissioning cost estimates. The instructions were to prepare the cost of decommissioning the station "as a whole". The Complainant argued that the cost of decommissioning attaches to the fee simple interest.

[150] The CARB was referred to the decision of the MD of Greenview CARB in Board Order CARB 2013-01 issued June 26, 2013 (found in Exhibit R28) which related to a complaint filed for the 2011 assessment for the 2012 tax year. The CARB in that appeal was called upon to make a decision in relation to the same question that is before this CARB. This CARB has

categorized the issue as set out in paragraph 147, while the CARB in the Greenview complaint phrased the question as set out below:

> ***[8] Reclamation Costs***
>
> *What adjustments should be made to the 2012 assessment to account for the reclamation requirements and costs which will occur at the time the plant shuts down?*

[151] That CARB determined that the costs of decommissioning (which it called reclamation costs) were the obligation of the operator, and did not affect the assessment. That CARB's conclusion is set out below.

> *[110] The Complainant has argued that the assessment should be reduced to reflect reclamation costs. The obligation respecting reclamation is also required by law and is a known cost and obligation of the operator from the very outset. The reclamation matter in the CARB's view is a known operating cost. If the purchaser is another plant operator, that purchaser would weigh the obligation and cost of reclamation against the ability to recapture these costs through the profit margins expected over the remaining life of the plant. A potential purchaser, not being a power plant operator, would in our view, not even consider a purchase without the reclamation completed by the company who has the legal obligation to do so.*
>
> *[111] The CARB therefore concludes that the reclamation costs in this case are not part of the typical fee simple consideration but rather are a business cost and a legal obligation on the part of the operator.*

[152] This CARB finds the reasoning of the Greenview CARB persuasive. The evidence in this case is that the operator of the Sheerness plant has "booked" the liability. This suggests to the CARB that it is an operating cost, rather than one that is attached to the land. It is simply another debt owed by the operator – one which will be owing at the time of decommissioning, whenever that event occurs. There was no evidence before the CARB about how the owner would deal with this liability in the event of sale, but the Complainant provided no evidence that the cost of decommissioning attaches to the assessment value, particularly, as set out in the Greenview decision, that the cost of decommissioning and reclamation is a known issue for any potential purchaser.

[153] The evidence is that the operator would not spend the money on decommissioning until closer to the actual decommissioning. This suggests to the CARB that it does not affect the assessment as of July 1, 2011, since it will not be incurred until an unknown date in the future – the date of decommissioning. There is no evidence as to how the owners would treat the cost of decommissioning in relation to the value of the buildings in the event of a sale.

[154] The CARB heard evidence that a portion of the revenue received by the owners is attributable to decommissioning (although it did not hear about the specific amounts attributable to decommissioning). The CARB understands that the cost of decommissioning is built into the rates. This again suggests that the costs are an operational matter, not one affecting the assessed value of the buildings.

[155] For these reasons, the CARB is not prepared to reduce the assessment for the cost of decommissioning

Issue 7

[156] **What is the appropriate depreciation for Sheerness?**

- **a) What effect, if any, does the end of the coal supply at the Sheerness mine have on the end of life of Sheerness?**
- b) **When is the end of life, and what impact does that have on depreciation?**

[157] The evidence before the CARB was that the coal supply at the Sheerness Mine was projected to end at or about 2026, depending upon how much the Sheerness facility is dispatched. The CARB accepts that with an assumed rate of consumption of 3.1 million tonnes of coal used per year, the coal supply estimated to be contained in the Sheerness mine will end at or about 2026.

[158] The CARB also accepts the evidence from the Complainant that it is currently exploring other options for fuel at the Sheerness facility, but as of the date of the hearing, no decision had been made by the owners as to alternate sources of fuel. The CARB noted that Mr. Horner has been urging his upper management about the need to make a decision about alternate fuel sources so that there will be time to implement the decision, should an alternate source be obtained. The CARB further notes that there had been no express statement to shareholders that Sheerness will close at the end of the coal supply.

[159] While the PPA ends in 2020, the current plans are for the plant to operate as a merchant plant for the balance of the current fuel supply, and beyond, if an alternate economic supply of fuel can be found. The evidence presented by the Complainant during the hearing centred upon the cost of alternate sources of fuel. The Complainant conceded that it did not lead evidence regarding future revenues from electricity sales.

[160] The CARB does not believe that the end of the PPA in 2020 is the end of life for the plant, and this is confirmed by the Complainant in its evidence that the owner intends to run as a merchant facility after the end of the PPA. The CARB is not prepared to accept the end of the coal supply at the Sheerness mine as the end of life for the Sheerness facility, particularly in light of the fact that as of the date of the hearing, there has been no firm decision that the Sheerness facility will close as of 2026, nor has such a shutdown been communicated to the shareholders. The CARB believes there is insufficient evidence before it to support a conclusion that the Sheerness facility will cease operations in 2026 (or when the coal supply at the Sheerness mine ends). Had there been some evidence of a firm management decision to this effect, or a conclusive notification to the shareholders of such a shut-down, the decision of the CARB *may* have been different. However, based on the evidence before the CARB, the owners have not made the decision to shut the plant in 2026. Therefore, there is insufficient evidence before the CARB to accept this as the end of life. This is particularly so in light of the fact that the CARB is concerned with the value as of the assessment date, which is July 1, 2011.

[161] The CARB believes that a determination that 2026 represent the end of life cannot be made based upon the evidence put before it in this hearing. The CARB is not prepared to change the assessed value based upon a 2026 end of life and due to this fact does not need to go beyond it to examine and rule on the methodology suggested by Mr. Hall regarding the reading of the depreciation tables in the Marshall & Swift manual.

Issue 8

[162] **Can the assessor increase the assessment from $59,137,270 to $61,137,829.00 as set out in Exhibit R53?**

[163] The decision of the Court of Queen's Bench *in Edmonton East (Capilano) Shopping Centres Limited v Edmonton, (City)*, 2013 ABQB 526 ("*East Capilano*") limits the jurisdiction of the CARB to change upwards an assessment only in the event of a mistake, omission or mis-description. The CARB notes that the Respondent has advised the CARB that it is of the opinion that this recent decision (issued on the last day of the hearing) is binding upon the CARB. The Respondent seeks confirmation of the assessment. The CARB notes that buildings 31 and 32 were new buildings, not included in the original assessment. Since they appear to fall directly into the category of "omission" addressed in the *East Capilano* decision and in light of the fact that the Complainant did not argue against their inclusion, the CARB accepts the addition to the assessment for these buildings.

[164] It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta, this 4th day of ~~October,~~ November 2013.

L. Patrick, Presiding Officer

APPENDIX 'A"
DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

Exhibit	Description	Date
PR1	Letter of Reynolds Mirth Richards & Farmer LLP	November 8, 2012
PR2	Letter of Wilson Laycraft LLP	November 12, 2012
PR3	Letter of Reynolds Mirth Richards & Farmer LLP	December 4, 2012
PR4	Letter of Wilson Laycraft LLP	December 13, 2012
PR5	*Canadian Natural Resources Ltd. V. RMWB* [2011] ABQB 2011	April 1, 2011
PR6	Decision CARB 0302 – 18/2011 from Strathcona County	July 21, 2011
PR7	Letter of Wilson Laycraft LLP	December 19, 2012
PR8	Email of Reynolds Mirth Richards & Farmer LLP	December 19, 2012
C9	Sheerness Power Purchase Arrangment & Mining Reports	May 3, 2013
C10	Sheerness Cost Analysis	May 3, 2013
C11	Linear Machinery & Equipment Assessment Review	May 3, 2013
C12	Complainant's Disclosure & Schedules	May 3, 2013
C13	Legal Submission of the Complainant	May 3, 2013
R14	Shaske & Zeiner Report "Explanation Of Recommended Costing Revisions" per: Kevin Zeiner	June 7, 2013
R15	Shaske & Zeiner Report "Rebuttal of AEC Property Tax Report	June 7, 2013
R16	Forte Business Solutions Ltd. Report	June 7, 2013
R17	Respondent's Volume of Legislation	June 7, 2013
R18	Barry Shymanski Regulatory Consulting Ltd. Report	June 7, 2013
R19	Dan Driscoll Consulting Ltd Report	June 7, 2013
R20	Report of Specialty Assessment Services Inc. per: Harry Schmidt	June 7, 2013
R21	CV of Harry Schmidt	June 7, 2013
R22	Respondent's Legal Argument	June 7, 2013

R23	Respondent's Volume of Authorities	June 7, 2013
C24	Complainant's Rebuttal Report and Schedules	June 17, 2013
C25	Attachments to Schedule B (Horner Letter) B1-B5	June 17, 2013
C26	2013 Battle River Shaske & Zeiner Cost Analysis	June 17, 2013
C27	Rebuttal Submission of the Complainant	June 20, 2013
R28	August 26, 2013 RMRF Letter	August 27, 2013
R29	Greenview Final Decision	August 27, 2013
R30	Report of Terry Jacobsen	August 27, 2013
R31	Revised Calculations	August 27, 2013
R32	Confidentiality Undertaking - Sheerness	August 27, 2013
R33	CV of Edgar L. Horner	September 9, 2013
R34	Confidentiality Undertaking- R. Fortin	September 9, 2013
R35	Confidentiality Undertaking – H. Schmidt	September 9, 2013
R36	Confidentiality Undertaking – K. Zeiner	September 9, 2013
R37	Confidentiality Undertaking – T. Jacobsen	September 9, 2013
R38	Confidentiality Undertaking – D. Driscoll	September 9, 2013
R39	Confidentiality Undertaking – S. Fulton	September 9, 2013
C40	CV of Cameron Hall	September 9, 2013
R41	Confidentiality Undertaking- R. Fortin	September 10, 2013
R42	Confidentiality Undertaking – H. Schmidt	September 10, 2013
R43	Confidentiality Undertaking – K. Zeiner	September 10, 2013
R44	Confidentiality Undertaking – T. Jacobsen	September 10, 2013
R45	Confidentiality Undertaking – D. Driscoll	September 10, 2013
R46	Confidentiality Undertaking – S. Fulton	September 10, 2013
R47	Confidentiality Undertaking – R. Smyth	September 10, 2013
R48	Confidentiality Undertaking - J. Christianson	September 10, 2013
R49	Confidentiality Undertaking – C. Risling	September 10, 2013
R50	Confidentiality Undertaking – J. Slemp	September 11, 2013

R51	Confidentiality Undertaking – B. Shymanski	September 11, 2013
C52	Email from C. Hall September 19,2012 at 3:11 pm	September 12, 2013
R53	Sheerness Generating Station Cost Summary (After Recommended Revisions)	September 12, 2013
C54	HR Milner Power Plant Witness Report K. Zeiner	September 12, 2013
C55	Cost Analysis HR Milner (May 2012)	September 12, 2013
C56	ATCO Power HR Milner Generating Plant MD of Greenview November 2003	September 12, 2013
R57	Letter of Reynolds Mirth Richards & Farmer LLP	September 25, 2013

APPENDIX "B"
REPRESENTATIONS

PERSON APPEARING		CAPACITY
1.	B. Dell,	Counsel for the Complainant
2.	C. Hall	Director, Industrial & Complex Property , AEC Property Tax Solutions
3.	E. Horner	Commercial Manager, Sheerness Generating Station
4.	C. M. Zukiwski	Counsel for the Respondent
5.	C. Killick-Dzenick	Counsel for the Respondent
6.	H. Schmidt	Speciality Assessment Services Inc.
7.	R. Fortin	Accurate Assessment Services
8.	D. Driscoll	Dan Discoll Consulting Ltd.
9.	B. Shymanski	Barry Shymanski Regulatory Consulting Ltd.
10.	S. Fulton	Forte Business Solutions Ltd.
11.	J. Slemp	Chairman, Special Areas Board
12.	T. Jacobsen	Assessor, Special Areas Board
13.	J. Christensen	Staff, Special Areas Board
14.	R. Smyth	Assessor, Special Areas Board
15.	M. Tautchin	Manager, Linear Operations, Municipal Affairs
16.	C. Risling	Director, Linear Property Assessment, Municipal Affairs

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Subject	Type	Sub-type	Issue	Sub-issue
CARB	electric power plant	generating system		