NOTICE OF DECISION **NO. DL 029/08**

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This is the decision of the Municipal Government Board (MGB) from a post-decision hearing for directions held in the City of Calgary from Monday December 3, 2007 to Wednesday December 5, 2007, respecting the decision in Board Order MGB 020/07, DL 112/07 and DL 113/07 which dealt with the 2006 (tax year) Linear Property Assessment Complaints submitted for Apache Canada Ltd., Burlington Resources Canada (Hunter) Limited, Burlington Resources Canada Ltd., Canadian Natural Resources Ltd., Daylight Energy, Flowing Energy Corporation, Midnight Oil Exploration Ltd., Tempest Energy Corp., Encana Corporation, Encana Oil and Gas Co. Ltd., BP Canada Energy Company, and Talisman Energy Inc.

Between:

Designated Linear Assessor for the Province of Alberta as represented by Reynolds Mirth Richards and Farmer LLP – Respondent

-and-

Apache Canada Ltd. et al as represented by Wilson Laycraft LLP – Complainants

In Attendance:

MGB: D. Thomas, Presiding Officer
A. Savage, Member

Respondent: C. Zukiwski, Reynolds Mirth Richards and Farmer LLP
K. Durkin, Reynolds Mirth Richards and Farmer LLP
C. Uttley, Assessment Services Branch, Alberta Municipal Affairs and Housing
T. Pellerin, Assessment Services Branch, Alberta Municipal Affairs and Housing
S. Young, Assessment Services Branch, Alberta Municipal Affairs and Housing

B. Ney, Consultant, Assessment Services Branch, Alberta Municipal Affairs and Housing
B. Brunsch, Perceptive Resource Management
Dr. E. Thompson

Complainants: G. Ludwig, Wilson Laycraft LLP
J. Thibault, JT Consulting
D. Johnson, JT Consulting
B. Cormier, Canadian Natural Resources Ltd.
K. Nelson, ConocoPhillips
D. Wheeler-Felstad, Encana Corporation
S. Reeder, Encana Corporation
P. Virdee, Encana Corporation
D. Bielecki, Talisman Energy

MGB Staff: S. Sexton, Case Manager

OVERVIEW

This matter involves linear property assessment complaints involving some 12,000 wells, of which a sample of 500 were selected by the Complainants as being representative of the issues in the rest of the population. A week long merit hearing was held in October of 2006 to decide several issues with respect to the 500 wells. The main issue at the hearing was the proper determination of well-depth, a variable used in calculating the tax assessment for a given well.

The MGB's decision from that hearing is found in Board Order MGB 020/07. A further hearing for advice and direction relative to MGB 020/07 was held on May 18th 2007, resulting in Decision Letter 112/07. As a result of MGB 020/07 and DL 112/07 (the Decisions), the Respondent in this matter, the Designated Linear Property Assessor in the Province of Alberta (DLA), was ordered to recalculate assessments for 356 of the 500 wells, in accordance with the terms and conditions in the Decisions.

The DLA recalculated the assessments for all of the 356 wells in accordance with the Decisions; however, there was disagreement between the parties about the proper application of the terms and conditions in the Decisions relative to the assessment of LPAU-IDs 3480996 and 2039318. This was the first issue before the MGB at the present hearing. A final determination regarding these two LPAU-IDs can be found in DL 028/08, the companion to this Decision Letter (the companion decision).

There being no further issues outstanding with respect to the application of the Decisions to the 356 wells, the purpose of this Decision Letter is to deal with the second issue, namely, to decide whether the findings and direction in the Decisions pertaining to the issues affecting the 356 remaining wells in the sample can be applied to the issues affecting the rest of the wells in the

population. The hearing is of a procedural nature and is not a re-hearing or review of the issues in MGB 020/07 or DL 112/07. No request for a re-hearing was made and the deadline for such a request expired some time ago.

A. Decision Format

Given the varying issues at this hearing, the MGB felt it would be prudent to produce separate written decisions on each issue. The issue in this Decision Letter is the applicability of the findings and direction in the Decisions about the 356 remaining wells to the remaining 11,000 wells under complaint. There were also several preliminary and procedural issues raised by the Respondent relating primarily to this issue, and a determination on those matters is also included herein. The issue of the proper application of the terms and conditions in the Decisions relative to the assessment of LPAU-IDs 3480996 and 2039318 is discussed and decided in the companion decision.

BACKGROUND

Further background of the events leading up to the present hearing can be found in the companion decision to this Decision Letter. The Background in MGB 020/07, DL 112/07 and DL 113/07 can also be referenced for a more comprehensive review of the relevant events in this matter.

1. Number and Category of Linear Property Complaints

The Complainants initially brought linear property complaints regarding 11,000 wells for the 2006 tax year. In an effort to streamline the hearing process, the Complainants identified 500 wells that in their view represented the issues with respect to the rest of the 11,000. These 500 properties proceeded to the merit hearing in October of 2006. Prior to making a decision on the 500 properties, the MGB received withdrawals for 116 of the LPAU-IDs, and confirmed recommended assessments for an additional ten LPAU-IDs, leaving 384 LPAU-IDs before the MGB at the October 2006 hearing. Similar to the 11,000 wells, each of the 384 wells fell into one of three remaining issue groups: a) Drilled and Cased wells; b) Well Depth; and c) Pool Code 158. These three issues are the main subject matter of MGB 020/07.

MGB 020/07 directed the DLA to change the assessments for a number of wells that were affected by the Drilled and Cased and Well Depth issues. Twenty-eight of the 384 wells dealt with the pool code 158 issue. The MGB confirmed the DLA's assessments for these 28 LPAU-IDs. In the result, MGB 020/07 required the DLA to review the assessment for 356 LPAU-IDs in the Drilled and Cased and Well Depth issue groups and where applicable, change the assessments based on the principles and directions on those issues.

With respect to the remaining 11,000 wells, MGB 020/07 indicated that the MGB anticipated that the findings and directions about the three issues would be applied to all of the wells.

2. DL 112/07 & DL 113/07

The DLA did not re-calculate the assessments for the 384 wells, but instead requested a hearing for further advice and direction pertaining to MGB 020/07. DL 112/07 was issued on August 2, 2007 as a result of that hearing. DL 112/07 re-affirmed the findings, principles and directions in MGB 020/07, and directed the DLA to review and change the assessments where applicable for the 356 wells in accordance with MGB 020/07. On September 20, 2007, the DLA submitted the changed assessments for the 356 LPAU-IDs, together with an explanation and technical breakdown of the process and methods adopted by it to change the assessments in accordance with its understanding of the direction in the Decisions. In some cases the assessments changed as a result of the application of the Decisions, in some cases they stayed the same.

DL 112/07 also directed that if the parties were unable to reach an agreement with respect to the application of the findings in the Decisions to the remaining population of wells outside of the 356 wells that they were to follow the direction in DL 113/07. DL 113/07 was issued on August 2, 2007 as a result of a hearing held in connection with the hearing for further advice and direction, for the purpose of getting the parties' input about how the remaining wells would be dealt with. DL 113/07 laid out a process that was to be followed with respect to how the parties and the MGB were to deal with the LPAU-IDs that were not within the original 500 LPAU-IDs chosen for the October 2006 merit hearing. Paragraphs 5 and 6 of that decision state:

> 5. If, after the meetings and discussions between the parties, the parties are unable to reach an agreement as to whether the sample findings in the Decision can be applied to the balance of the wells under complaint, both parties must provide written argument within 30 days from the date of this order specifying their reasons (including any examples) why the directions on the 500 sample wells either can or cannot be applied to the remaining population of wells.
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> 6. In the event that written reasons are received from the parties specifying why the MGB's directions on the 500 sample wells can or cannot be applied to the wells in the remaining population, the MGB will convene a hearing as soon as practicable to hear further submissions from the parties and make a determination on the issue.

Implementing the findings and direction of the MGB with regard to the assessments for the 356 LPAU-IDs is no longer at issue. However, beyond the 356 wells, the parties could not agree as to whether the findings in the Decision could or should be applied to the issues affecting the larger group. The Complainants favoured having the findings and directions in the Decisions applied to all of the properties under complaint; the Respondent opposed this procedure. Accordingly, the MGB directed written submissions from the parties, and set the matter down for the present hearing which took place on December 3rd to 5th, 2007. Written argument and summaries were

directed by the MGB at the conclusion of the hearing and all were subsequently received by January 22, 2008.

PRELIMINARY MATTERS

At different stages in these proceedings, the Respondent raised several preliminary matters. These matters are delineated below together with the MGB's decision and reasons on each matter.

1. Quorum and Nature of Hearing

a. Issues and Party Positions

At the outset of the hearing, the MGB indicated to the parties that one of the original panel members in this matter, Mr. Gilmour, would not be in attendance at the present hearing, and that the MGB would proceed with the matter by way of a quorum of the remaining two members, Mr. Savage, and Mr. Thomas.

The Respondent requested clarification as to whether the panel intended to conduct one hearing with respect to the outstanding substantive issues carrying over from the 356 wells in MGB 020/07 relating to LPAU-IDs 3480996 and 2039318 (the first matter), at which point that hearing would come to an end, and then start a new hearing to deal with the issue of how to proceed with the remaining 11,000 LPAU-IDs, and whether or not the principles in MGB 020/07 could be applied to the issues affecting the remaining wells (the second matter).

It is the Respondent's position that once the MGB disposes of the first matter, that hearing would come to a close, and a new proceeding would commence to deal with the second matter. The Respondent indicated that this understanding was based on conversations between its counsel, counsel for the Complainants and counsel for the MGB related to the judicial review already filed at the Court of Queen's Bench with respect to MGB 020/07. Furthermore, it states that two separate Decisions were issued with respect to the May 18th hearings; DL 112/07 regarding the clarification from MGB 020/07, and DL 113/07, regarding what procedure was to be followed with respect to the remaining wells. Therefore it believes there has been a distinction drawn in the past between the MGB 020/07 matters regarding the 384 wells, and the resolution of the remaining 11,000 wells.

The Respondent requested that counsel for the MGB participate in the present hearing by way of teleconference to determine what representations were made with respect to the conduct of the present hearing. The Respondent objected to hearing the second matter by way of quorum and requested a three member panel be constituted to hear and decide that matter.

The Complainants stated that the conversation between counsel pertained to what would constitute the record with respect to the judicial review of MGB 020/07, given the outstanding

matters and multitude of different proceedings that have taken place. The Complainants take no issue with what will eventually be involved in the judicial review, but believe that it would be practical if all matters were before the Court on judicial review. However, for the purpose of the present hearing, it is not necessary to end one hearing and reconvene another.

b. Decision and Reasons on Preliminary Matter No. 1

It was inappropriate and unnecessary to require the participation of MGB counsel in these proceedings. This would have been an unprecedented practice for the MGB, particularly where there was no notice that such a request would be made of it. Furthermore, these discussions could not bind the MGB about its choice of procedures in the present hearing.

The MGB is of the view that the first and second matters before the MGB at this hearing are, and always have been, tied to the same set of proceedings. It was thus unnecessary to stop the first matter, convene a new hearing, and deal with the second matter. MGB 020/07 specifically references what further steps will be taken with respect to these wells. Since early on in the proceedings, both parties were aware of the process being followed to deal with the large amount of complaints. A determination of the first matter in the present hearing regarding LPAU-IDs 3480996 and 2039318 will give further certainty about how MGB 020/07 is to be interpreted and applied. The MGB can therefore proceed to determine the second outstanding matter, which is whether the remaining wells all have the same issues and facts as the original 384, and thus warrant applying the findings in MGB 020/07 to all of the issues for all of the wells. If it is shown that there is a dissimilarity in the facts or issues in the remaining wells, or that there is a valid reason not to proceed by the process being contemplated, that would justify opening a new hearing and convening a new panel.

The argument that the MGB had somehow severed the remaining wells from the 384 wells through DL 112/07 and 113/07 is not persuasive. These decisions both refer to a process to resolve the remaining well complaints, as did MGB 020/07, and the prior preliminary decisions in this matter.

With regard to the Respondent's objections relating to quorum and the composition of this panel for hearing the second matter, the MGB has determined that both matters are properly part of this hearing and thus it would be inappropriate to bring in a new panel member at this stage, particularly given that the same panel has been vested with the determination of these matters since the outset of the October 2006 merit hearing.

2. Number of Wells

a. Issues and Party Positions

The Respondent requested the MGB to provide a current list of the remaining wells that remain "live" in each issue group. The Respondent submits that an accurate and up to date list of all of

the remaining wells is essential for it to determine if the wells subject to MGB 020/07 are "representative" of those remaining.

The Complainants filed materials with the MGB indicating that there remain 303 Category 1 (Drilled and Cased) wells and 10,890 Category 2 (Well Depth) wells. The Complainants seek relief for all of the remaining Category 1 wells. Approximately 3,396 of the Category 2 wells contain some sort of flow prevention device. Of these wells, 2,732 have perforations above the device at a depth less than the assessed depth, and it is primarily for these wells that the Complainants indicated they seek relief.

b. Decision and Reasons on Preliminary Issue 2

The MGB decided to proceed with the current hearing with the proviso that an adjournment would be granted if it appeared that this issue might affect the Respondent's case.

The MGB is satisfied that the Complainants have sufficiently disclosed to the Respondent the number of wells for which it still seeks relief. Furthermore, the Complainants have agreed to provide a more comprehensive categorical breakdown of these wells. Under these circumstances, the MGB sees no unfairness in proceeding to deal with the balance of the wells and to determine whether and under what circumstances the principles in MGB 020/07 should apply to the remaining wells.

3. Change in Category 2 to Category 5 Well Complaints

a. Issue and Party Positions

The Respondent requested clarification as to why 5,200 of the remaining wells originally classified as category 1 wells, had recently been re-classified as category 5 (pool code 158). Given the Complainants' lack of success in MGB 020/07 with respect to the pool code 158 issues the Respondent asked if the Complainants were still pursuing these complaints under that issue category.

The Complainants stated that previous correspondence sent to the MGB and the Respondent had mistakenly classified these wells under issue category 5. The wells were later clarified as being category 1 wells in subsequent correspondence to the MGB.

The Respondent indicated that it did not receive the subsequent clarification from the Complainants. It requested copies of the clarification.

b. Decision and Reasons on Preliminary Issue 3

The general practice in MGB proceedings is that each party copies all other parties with all correspondence to the MGB in a given matter. The MGB accepts that the failure to do so was not

intentional; however, it encourages the Complainants to be more diligent in complying with this process, as it can potentially have undesired consequences, such as causing a delay in the hearing process due to a failure to disclose.
It was clear that the 5,200 properties were originally misclassified and then corrected promptly. The Respondent was not notified of the correction. At the hearing, the MGB case manager provided to the Respondent the subsequent correspondence of the Complainants clarifying this issue. Though this may have created some confusion about the category change for the Respondent, there was no detriment to the Respondent's present case that arose as a result of the misclassification, as the schedules in Mr. Thibault's report clearly indicated the wells and issue categories for which he is still seeking relief. Further, the only relief sought by the Respondent was clarification of this issue.

4. Complainants' Disclosure

The Respondent raises three issues relative to the Complainants' documentary disclosure for this hearing:

- **Will-says of Ms. Wheeler-Felstad and Ms. Owchar** – these will says do not indicate anything substantive as far as the evidence that will be given by these witnesses and only indicate that they may be called as rebuttal witnesses.
- **Will say of Joe Thibault -** Mr. Thibault's report does not cover some of the points within his will-say statement, in particular, points 3, 4, and 8 of the report.
- **EUB codes for flow prevention devices –** in opening remarks, the Complainants stated that the nature of a flow prevention device could be identified through reference to the EUB code assigned to that device. This point is not referenced in Mr. Thibault's reports.

In response, to the above points, the Complainants argue:

- Ms. Wheeler-Felstad and Ms. Owchar will not be giving evidence at the present hearing;
- Mr. Thibault is the only witness being called by the Complainants. There is no requirement that his will-say must overlap with his report. Whatever is not covered in the will-say, is dealt with in the report. Furthermore, the Respondent's witnesses have provided reports only, without providing any will-says.

Further, the Complainants argue generally that the issue of requiring additional disclosure should be decided after the MGB has had an opportunity to hear the relevant evidence on the main issues at the present hearing.

b. Decision and Reasons on Preliminary Issue 4

A review of Mr. Thibault's report and will-say statement leads the MGB to believe that he has adequately disclosed his evidence at the present hearing. As Mr. Thibault is the only witness, it is clear that he will be giving evidence from within the report or the will-say, or any other evidence

filed by him on behalf of the Complainants. The MGB believes that the Respondent can meaningfully understand the case of the Complainants as disclosed by their materials, and the MGB sees no basis for the argument that the will-say must correspond to or be limited by the other documents of Mr. Thibault. As pointed out by the Complainants, no will-say statements were filed for the Respondent's witnesses; only reports were filed. The issue with respect to the Complainants' other two witnesses is disposed of given that neither will be providing evidence at the hearing.

Although the EUB mode codes do not appear to be specifically disclosed in the Complainants' materials, the MGB agreed to allow this evidence in on the basis that it is relevant and that the operation and packer codes exist in Table 14 and Table 18 in EUB Directive 059, a document that was produced in R-13 of the Respondent's materials before the MGB. The actual evidence led by Mr. Thibault at the hearing about EUB mode codes was minimal, and simply referred to the existence of the codes, and that plugs were categorized by the EUB by different code descriptions in R-13, which could not have been a surprise to the Respondent as it was contained within their own documents. Mr. Thibault's evidence was that he "identified all of the bridge plugs in that table to determine the perforation above the bridge plug" using Geo Vista treatment data. His evidence was not that he used the codes in the table to distinguish the different types of plugs that may or may not have been capable of being produced through; he used Geo Vista data to determine where production occurred below the device.

The evidence about distinctions between devices using EUB codes came in mostly through cross-examination of the Respondent's witness, Berni Brunsch. This was acceptable since the information in Guide 59, including Tables 14 and 18, is included in the Respondent's materials, and Mr. Brunsch's report clearly references the terminology associated with these codes when certain cement treatments are performed (at page 12, second last bullet of R-17). Given these facts, it was clear that evidence about different codes and terminologies used to report different plugs was within the knowledge of the Respondent and its witnesses at the time of the hearing. The fact that this evidence was raised in this hearing could not be said to be unexpected. For all these reasons the MGB believes that there is no reason to exclude Mr. Thibault's evidence on EUB mode codes found in Exhibit R-13, nor was there any reason to adjourn proceedings.

5. Data and Format Issues with the Schedules in Mr. Thibault's Report

a. Issues and Party Positions

During the hearing, the Respondent raised several issues relating to Schedules A, B, and D of Mr. Thibault's report (exhibit C-5), including:

- There is a discrepancy in the data between the electronic format of the schedules and the hard copies provided by the Complainants. Furthermore, the Respondent only had seven days to prepare a response to this information. The Respondent requested that the reason for the discrepancy be clarified;

- There is no “back up” data or data source provided to support the information and calculations driving the requested depths and requested assessments in the schedules. The Respondent requested that this back up data be provided, but also that it be provided in an electronic format suitable for electronic analysis. The Respondent also requested that it be given time to analyze this data.
- Without back up data (i.e. the Geo Vista well tickets), there is no way to confirm the “as of date” of the Data to ensure that it captures data taken at November 30, 2005. The Respondents request that proof of the same be produced;
- The Complainants should also provide an electronic copy of the list of wells from the original information CD (exhibit C-16 in MGB 020/07) to compare with schedules A, B and D, to confirm that there have been no additions, deletions, or issues category changes in the Complainants’ new schedules.
- The Respondent should be provided access to any computer calculation program that was used in the determination of the values in the schedules.

The Respondent argues that without proper disclosure of the above, it cannot properly cross-examine Mr. Thibault about his conclusions, because it does not know the data upon which they were based. Without this data, the Respondent submits that there is insufficient basis for the MGB to properly determine the issue of representativeness.

The Complainants contend generally that the production of any additional disclosure is best determined after the MGB has heard the issues and determined what is or is not relevant to decide the issues before it. However, it is the Complainants position that the MGB has been clear that for this hearing it does not want to get into the individual evidence or Geo Vista tickets for each of the remaining 11,000 wells to determine whether or not MGB 020/07 can be applied. In response to the specifics of the Respondents requests, the Complainants argue:

- The reason for the discrepancy in the data between the electronic format of the schedules and the hard copies provided was due to the fact that when the original electronic schedules were printed, the font was too small, and thus illegible. In order to make the document readable, some of the data element columns were removed from the electronic data, such that all of the wells with flow preventing devices on the first 42 pages of Schedule A were in readable form. The remaining pages in the Schedule (showing the wells without flow prevention devices) are smaller as the columns have not been removed.
- Whether the calculations in the schedules were based on November 30th data and whether the Respondent requires access to the proof of this fact for each well is not relevant or necessary, given that the Respondent has access to its own November 30th EUB data. It has already used this information to re-calculate the 384 sample wells. It did so without the need to refer to Geo Vista data of Mr. Thibault. Alternatively, the Respondent has the Complainants’ supporting information for all of the wells from the October 2006 merit hearing. Although this information was based on February runs of Geo Vista data, there is only a small percentage of the wells in the schedules that would

have any variation in the supporting information as a result of the February 2005 versus the November 2005 "as of" date that the Geo Vista information was taken.
- The provision of electronic copies of the data is unnecessary, and inconsistent with the Respondent's position at the merit hearing that only paper evidence should be produced.

In summary, the Complainants argue that the relevant issue can still be easily heard and determined by the MGB without the need to produce every well ticket in support of the information contained in the schedules of Mr. Thibault's reports. An adjournment is not required at this point to allow the Respondent to further thrash out data that is unnecessary and irrelevant to the questions currently before the MGB.

b. Decision and Reasons on Preliminary Issue No. 5

At the time of the hearing the MGB indicated that it was not inclined to order the Complainants' Geo Vista "back-up" data in support of the Complainants' schedules or the calculation program that generated the re-calculated assessments in the Complainants' schedules. After the hearing concluded, the MGB panel discussed and reviewed that oral decision, and subsequently varied it by ordering that the requested materials be produced by December 17, 2007.

The MGB originally was of the opinion that such calculations were not of relevance, based on the Complainants' arguments above. However, on review, it was decided that the MGB would be in a better position to make the determination as to relevancy or weight of the materials upon having reviewed the same. This was consistent with the approach taken with the reception of much of the evidence at the hearing. Furthermore, the MGB notes that at different stages of the proceedings, Mr. Thibault agreed that this could be provided to the Respondent. Accordingly the MGB felt it would be more reasonable to receive and review the evidence and then determine its value according to its relevance to the issue at hand.

Upon reviewing the documents, the MGB was of the view that the new materials disclosed were in fact irrelevant and unnecessary for it to make a determination on the issue before it.

The Respondent indicated to the MGB that it required this information in order to test the accuracy of Mr. Thibault's conclusions and calculations in the schedules of his report, and to analyze this Geo Vista data and compare it to the EUB's GWF. However, MGB 020/07 (supplemented by DL 112/07) directs the use of the November GWF (not Geo Vista data) to re-calculate the assessments for the wells. The purpose of the hearing is to assess if the direction in the Decision is applicable to the remaining wells. The purpose of the hearing was not to critique how each of the 11,000 re-calculations were derived using Mr. Thibault's methods or data for the remaining 11,000 wells; that, in fact, would be entirely contrary to the purpose of the present hearing. Given the above, it remains unclear from the Respondent's submissions and correspondence how testing and comparing the Geo Vista data used to arrive at the calculations in the Complainants' schedules is relevant to the issue of whether MGB 020/07 can or should be applied (using the November GWF) to the remaining wells.

The MGB finds that the purposes for which the information was sought by the Respondent were not relevant to the issue before the MGB, and thus the lack of production of this data was in no way harmful to the advancement of the Respondent's case. The MGB therefore did not consider this post-hearing evidence in coming to its decision on the main issues in this matter. Accordingly, schedules A, B, and D of C-6 were considered by the MGB only on the basis that they were entered as evidence by the Complainants with the intention of showing that calculations were done by the Complainants following the guidance in MGB 020/07 using EUB derived Geo Vista Data. To the same end, the MGB will not grant the Complainants request that it adopt the recalculations in the schedules, as to do so would be accepting the truth or accuracy of the source from which they were derived.

ISSUES

1. Does the MGB have jurisdiction to direct a process whereby the findings, principles, and direction from Board Order MGB 020/07 and DL 112/07 pertaining to the issues affecting the 384 LPAU-IDs are applied to the issues affecting the remaining population of wells?

2. Are the findings, principles, and direction from Board Order MGB 020/07 and DL 112/07 pertaining to the issues affecting the 384 LPAU-IDs capable of being applied to the issues affecting the remaining population of wells?

    a. Are the facts and issues that were germane to the MGB's decision about the 384 LPAU-IDs in Board Order MGB 020/07 and DL 112/07 substantially similar or different than those facts and issues affecting the remaining population of wells?

    b. If the facts and issues are substantially similar for both the smaller and larger group of wells, are there other valid reasons why the findings, principles, and direction from Board Order MGB 020/07 and DL 112/07 cannot, or should not, be applied to the remaining population of wells?

PARTY POSITIONS

Issue 1 - Jurisdiction

Respondent

The Respondent states that the central issue at the present hearing is determining what process to follow to resolve the 11,000 wells remaining for the 2006 tax year. The Respondent does not agree that the direction in the Decision can be or should be applied to the remaining wells. Nor does it agree that the central issue before the MGB is why it can or cannot apply MGB 020/07 to

resolve the unscheduled well complaints for the 2006 tax year. The MGB can only consider this question as a jurisdictional, not procedural, issue. It submits that the MGB is not vested with jurisdiction to apply MGB 020/07 to resolve the unscheduled well complaints.

The Respondent argues that the MGB's jurisdiction to decide linear property complaints stems from section 499 of the Act. In its view, the Complainants are required to bring evidence which provides the factual foundation to support the complaints filed for each linear property assessment. When making a decision on a linear property assessment complaint, the MGB may decide to confirm the assessment or make a change with respect to a linear property assessment as per s. 499(1)(b) of the Act. Before it is vested with the authority to make a decision, the MGB must hear the evidence through the direct testimony of witnesses and make determinations with regard to the admissibility, weight and relevance of the evidence with regard to each linear property assessment that is complained (i.e. the linear property shown on the assessment notice). To change a linear property assessment, the Board must receive evidence that factually supports the change to the assessment of the particular linear property under complaint. If the Complainants do not bring evidence that proves a particular linear property assessment is incorrect, the Board should not make a change to that particular assessment. Section 499(1) of the Act and the authorities very clearly place the burden on the Complainants to prove that a change to the assessments must be made by the MGB.

The Respondent further submits that a Board's power to control its procedure does not give it the authority to apply MGB 020/07 to the remaining wells, and the cases offered by the Complainants to support this proposition can all be distinguished from the present case. The Respondent agrees that the general law supports a tribunal controlling its own procedure subject to the provisions of its enabling legislation. However that is distinct from the present situation in which the provisions in section 488(2) and 499(1)(b) affect the MGB's ability to set its procedures. Part 12 of the MGA read as a whole, and in particular sections 488(2) and 499(1)(b) requires the Board as a body established to adjudicate complaints to schedule a merit hearing to resolve the unscheduled complaints for the 2006 tax year. The MGB cannot treat its prior decisions as a precedent. The MGB's power to control its procedure must be done in the context of the s. 488(2) and s. 499(1)(b), and cannot be used to override the mandatory provision of section 488(2), that the MGB must hold a hearing for complaints about linear property. The Respondent submits no authority exists either in the MGA or under case law that would allow the Board to apply the findings of fact and interpretations of legislation in MGB 020/07 and DL 112/07 to the unscheduled well complaints as the method to resolve those complaints.

Complainants

In response to the Respondent's legal arguments that there is neither jurisdiction nor previous precedent for the MGB to apply a process such as sampling, the Complainants cite the provisions of section 531 and 496 of the Act, which allows the MGB to adopt and control its own procedures, and not to be bound to the rules of evidence in making a determination on a matter. In addition, section 497 gives the MGB the power to compel a party to submit final assessment

valuations based upon principles established about issues brought forward at a hearing. In the Complainants' experience, this process has often been used as an acceptable and effective vehicle to bring finality to MGB proceedings. This type of process is consistent with the overall intent of the Act to provide a cost–effective way to hear and resolve assessment complaints on an annual basis within the 150 day requirement of section 468 and 500 of the Act. In support of the general proposition that a board or tribunal is the master of its own process and is permitted to dictate the procedures it will follow in its proceedings, the Complainants cited the following cases: Lake City Casinos Ltd. v. British Columbia (Human Rights Tribunal) 2006 BCJ No 115; Prassad v. Canada (Minister of Employment and Immigration) [1989] 1 S.C.R. 560; British Columbia Securities Commission v. Pacific International Securities Inc. (2002), 215 D.L.R. (4th).

As an example of previous instances where a similar type of approach had been taken to efficiently deal with assessments on a large number of properties affected by the same issues the Complainants cited decisions MGB 039/05, and MGB 102/05, in which a similar process was directed by the MGB where a number of different properties faced similar issues relating to the appropriate cap rate to be used in the assessment. The Complainants further highlight that this process has also been used in the past for linear property complaints, as is evidenced in MGB 168/01, where the DLA was directed to submit recalculated assessments in accordance with certain findings of the MGB pertaining to non-operational pipelines. Finally, the Complainants cite Ontario appellate level authority which supports the general proposition that a tribunal is entitled to control its process so as to best balance the needs for efficiency with the need for fairness and process; Metropolitan Toronto Housing Authority v. Godwin [2002] O.J. No. 2514 (C.A.).

FINDINGS – Issue 1

1. The MGB has jurisdiction to direct that the remaining wells be assessed in accordance with MGB 020/07, as supplemented by DL 112/07, and the direction herein.

REASONS

1. Overview

The MGB is satisfied that it has jurisdiction to hear evidence and determine an issue affecting a group of linear properties under complaint based on that evidence and apply its determination to similar properties within the same proceedings that are affected by the same issue. It is not the intent of the Act to require the MGB to hear repetitive evidence about the same issues, property by property where the facts and issues are shown to be common across all properties within the group. The Act does not contemplate unnecessary repetition in the MGB hearing process for linear property complaints.

To the extent that similar properties in the same complaint are affected by the same issue, the MGB does not lose jurisdiction where it directs that the determination on an issue is applicable to the balance of the properties affected by the same issue. If a final determination is made on an issue that has a bearing on the assessments of all of the like properties, it follows that the MGB has jurisdiction to order a change to those assessments, as contemplated by s. 499 of the Act. Before choosing to proceed in this manner, the MGB satisfied itself that all of the complained properties in each issue group for which relief is sought are subject to the same issues and factual underpinnings from which the issues were originally determined. Having found this to be the case, the MGB believes that such an approach is within the scope of its enabling legislation, and is consistent with the rules of natural justice, particularly where the parties are given full opportunity to speak to the merits of this approach.

The MGB interprets the Respondent's jurisdictional challenge to be mounted on two related fronts, which are addressed in turn:

a) The MGB has no jurisdiction to apply findings on issues affecting linear property derived from considering factual evidence and argument on one group of linear properties at a hearing, to other linear properties under complaint, regardless of whether the issues that have been decided and the factual scenarios are common across the other linear properties under complaint. According to the strict interpretation of the Act, the MGB must hold a formal hearing and hear evidence with regard to every property under complaint before making a determination to change the assessment;

b) The MGB has no jurisdiction to blindly follow precedent simply because the facts and issues in a previously decided matter (MGB 020/07) may be similar to another matter before the MGB. If the MGB applies the Decisions to the remaining properties, it will fetter its discretion, rendering the decision a nullity. According to the Act, the MGB must hold a formal hearing and hear evidence with regard to every property under complaint before changing the assessment;

2. Ground No. 1 – Act Requires Formal Hearing for each Linear Property

a. *Review of Respondent's Argument and Sections 488, 492 and 499 of the Act*

The relevant provisions of sections 488, 492 and 499 of the Act are as follows:

> *488(1) The Board has jurisdiction*
> *(a) to hear complaints about assessments for linear property*
>
> *(2) The Board must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a), (b) and (c).*

> *492(1) A complaint about an assessment for linear property may be about any of the following matters, as shown on the assessment notice:*
> *(c) an assessment;*
>
> *499(1) On concluding a hearing, the Board may make any of the following decisions:*
> *(b) make a change with respect to any matter referred to in section 492(1), if the hearing relates to complaint about assessment for linear property;*

The Respondent has argued that the above sections of the Act, together with other direction in Division 2 of Part 12 make it mandatory to hold a formal hearing at which witnesses testify. Further, the MGB's Procedure Guide contemplates a formal hearing process. The Respondent suggests that the language in section 499 indicates that the MGB must have evidence on an assessment for linear property before it can make a change to an assessment about linear property. It reasons that any decision with respect to the present matter must therefore be based on evidence and argument for each complaint about each linear property at the hearing.

The MGB respectfully disagrees that the Respondent's interpretation is consistent with the scheme of the Act. The MGB sees two related results from the Respondent's interpretation that would be incongruent with the Act.

First, the MGB would never be able to comply with its timeline for issuing decisions under section 500 of the Act. Though Ministerial extensions are often sought in linear property complaints, the MGB is of the view that the Act clearly demonstrates an intent to have linear property complaints decided within a set time frame, which is consistent with the annual cycle in which assessment complaints are filed. Given the annual nature of the linear complaint process, there is a clear need for efficiency in scheduling hearings (preliminary and merit), conducting hearings, and rendering written decisions arising from hearings. Efficiency is not achieved through the hearing of repetitive evidence on the same issue.

Secondly, the practical time commitments for the parties and the MGB that would be involved with 11,000 individual hearings about linear property would be immense and unworkable for all involved. The Respondent is recognized under the Act as the Designated Linear Assessor in Alberta, and as such is always the sole respondent in any given linear property complaint. It is a party to several preliminary and merit hearings over the course of a complaint year. It has numerous other functions and commitments that would make it unreasonable to devote this much time to a single matter. Of equal importance, if a complaint had to proceed on a hearing by hearing, well by well basis, there would be no utility for a complainant to ever appeal a large number of assessments affected by the same issue, since the time and costs associated with such an endeavour would far outweigh any potential benefit. The well by well evidentiary requirement advocated by the Respondent, if accepted would effectively take away a complainant's right of

complaint for large volume complaints. This is an unacceptable result which would contradict the entire meaning of the complaint process in part 12 of the Act.

The MGB is aware of the Respondent's view that such a hearing would last for 3 weeks, though it gave no substantive examples of the process it would use to support this view, or that such a process would be different or superior to the one at issue. Moreover, the Respondent has indicated that at the October 2006 merit hearing evidence was presented on only 17 wells out of the original group of 384, from the larger group of 11,000 well assessment complaints. The October 2006 merit hearing required 6 hearing days to hear evidence about these 17 wells. Even if the parties were limited to one data source, without further evidence of the process being proposed by the Respondent to shorten the required hearing time for each of the 11,000 wells, the MGB cannot accept that it would be anything less than what it has been in the past for this type of complaint, or that it would only require three weeks of hearing time. The MGB did not see anything in Mr. Ney's evidence that adequately described such an expedited hearing process, despite the fact that he was called to provide evidence about such a process using alternative methods of data analysis.

The length of time required to hear similar evidence on every well, for thousands of wells, where that evidence all speaks to the determination of the same issue, would be redundant and constitute an unnecessary use of hearing time. The strict interpretation of s. 488 and 499 advocated by the Respondent in favour of a well by well approach is inconsistent with the deadlines in the Act, would run afoul of the annual linear complaint cycle contemplated in the Act, would threaten a complainants' right to appeal assessments for a large volume of properties, and is entirely incongruous with the purpose of an administrative tribunal such as the MGB that often deals with large volumes of complaints on an annual basis.

b. *Review of Respondents argument and Sections 496, 523 and 500 of the Act*

A purposive interpretation of sections 488, 492, and 499 of the Act must take into account the time limitations placed on the MGB to render decisions relative to the practical and legislative constraints that the MGB faces with regard to the efficient disposition of complaints (s. 500), and must recognize that the Act empowers the MGB to make rules regarding its procedures (s. 523), and gives it flexibility in the manner in which it receives and considers evidence at hearings (s. 496).

The relevant provisions of sections 496, 500 and 523 of the Act are as follows:

> *Proceedings before the Board*
>
> *496(1) The Board is not bound by the rules of evidence or any other law applicable to court proceedings and has power to determine the admissibility, relevance and weight of any evidence.*

> *(2) The Board may require any person giving evidence before it to do so under oath.*
>
> *(3) Members of the Board are commissioners for oaths while acting in their official capacities.*
>
> *Time for making decisions*
>
> *500(1) If the hearing relates to a complaint about an assessment for linear property, the Board must make its decision within 150 days after the assessment notices relating to linear property are sent out.*
>
> *Rules re procedures*
>
> *523 The Board may make rules regulating its procedures.*

The Act recognizes the MGB's need for a degree of autonomy in its appeal and complaint processes, and bestows the power to make rules regulating its procedures through section 523 of the Act. The Act further acknowledges the need for flexibility in the hearing process, and section 496(1) specifies that the MGB's proceedings are not bound by the same rules of evidence or other laws applicable to court proceedings. Section 496(2) makes it discretionary as to whether the MGB chooses to hear evidence from a witness under oath. The purpose of these sections is to allow the MGB significant flexibility to deal with the complexities involved in the appeal process in order to run hearings and complete decisions in a timely and effective manner. The MGB must have flexibility to organize and decide complaints in the manner it chooses, subject to the requirements in the Act, and the principles of fairness and natural justice.

Having reviewed the enabling provisions of the Act, the MGB believes that they are consistent with the issue based approach that the MGB has adopted to efficiently deal with the present matter.

c. *Procedural Fairness and Natural Justice*

The MGB also finds that there is no breach of fairness or natural justice arising out of such a process, as both parties were able to bring their argument and evidence to the table at the October 2006 merit hearing in support of their positions on the common issues with respect to the category one, two and five well complaints. During the May 18, 2007 hearing the parties were given further opportunity to state their positions on how to deal with the remaining wells, given the expectations in MGB 020/07 and earlier preliminary hearings that the findings would be applied to the remaining wells. Through the present hearing, both parties were afforded ample opportunity to raise evidence and argument as to the appropriateness of the issue group sampling procedure which had been originally contemplated as the vessel by which this matter would

proceed. Accordingly, the process contemplated affords the necessary procedural rights to the parties.

d. *Authorities*

The MGB was also swayed by the Complainants' argument that the MGB has authority to control its procedures. In particular the commentary from Justice Sopinka in Prassad that it is a general rule that a tribunal is the master of its own procedures, and the commentary in Pacific International that tribunals can devise flexible procedures to achieve a balance between the need for fairness, efficiency and predictability of income. The Respondent's argument that these cases are distinguishable on the specific facts is not persuasive given that the respective courts are clearly stating general principles.

Finally, the Toronto Metropolitan case is most on point with the present set of facts. Although an Ontario appellate level case and not binding on the MGB, it persuasively supports the proposition that an expeditious process for evidence at a hearing is acceptable where the issues are common across a group (in that case a group of tenants), as long as it is done in a manner that afforded procedural fairness to all involved. Once again, the Respondent distinguishes this case on its facts, and enabling legislation. The facts are very similar, and if anything, the evidence and facts in the present case are more amenable to being organized expeditiously based on similar issues, as they deal with finite well characteristics affecting the whole population of wells, as opposed to the personal experience evidence of 11 tenants on behalf of 300 other tenants, as was the case in Toronto Metropolitan. Although the Board in that case had a specific provision in its act authorizing expeditious proceedings and the MGB does not, a parallel can be drawn between that provision and section 500 of the MGB's enabling legislation, which requires a hearing to be held and a decision made within 150 days from the assessment, which is approximately 100 days from the deadline for filing the assessment complaint with the MGB. Both the Act and the legislation in Toronto Metropolitan give the tribunal authority to adopt rules regulating their procedures. Furthermore, the legislation in that case had a specific provision giving a respondent the right to cross-examine each applicant. The Act has no such requirement, and therefore appears more flexible in terms of the manner in which the MGB can receive evidence by virtue of s. 496.

3. Ground No. 2 – Not Bound by Precedent

To the MGB, the process of applying the findings from one group of wells to the same issues affecting other wells within the same set of proceedings for the same complainants in the same complaint year is different than applying a previous decision or "precedent" from a previous year to similar issues that arises in a subsequent year. The Respondent's argument and cases all refer to tribunals rigidly applying previous decisions from a previous year or from an entirely different proceeding or different case to a set of new but similar facts or evidence. Though all of the wells were not put before the panel at the merit hearing due to the issue sampling process by which this matter proceeded, it cannot be said that the wells not scheduled for hearing were outside of the

proceedings relative to these complaints, or part of a different case now put before the MGB. Furthermore, it was contemplated at all stages of the proceedings that where appropriate, the findings would be applied to all of the wells, either through agreement between the parties or through MGB process. Adopting such a process does not fetter the MGB's decision making, since the decision relates to the issues, which are common across all of the properties. As such the MGB does not accept the Respondent's argument that it is rigidly applying precedent to the remaining wells.

4. Summary - Jurisdiction

The requirements of the Act which the Respondent argues require the MGB to hold a hearing and consider evidence on each individual linear property before making its decisions (regardless of the existence of identical issues affecting the properties) are to be viewed in light of the MGB's mandate to make decisions in a timely manner, and its authority to set its procedures having regard for this requirement, in a manner that is procedurally fair, without requiring the same strict evidentiary rules that bind the Courts. Given the similarity of issues and facts across all of the wells under complaint, the MGB is of the view that an individual hearing is not required for every complaint about every linear property for the purposes of s. 492 and 499 of the Act. Where issues and facts are shown to be common to a group of properties (which the MGB accepts to be the case for both issue groups) the onus of proof lies with the Complainants to satisfy the MGB on an issue, and not on each individual property, as suggested by the Respondent.

Issue 2 – MGB 020/07 and the Remaining Wells

Are the findings, principles, and direction from Board Order MGB 020/07 and DL 112/07 pertaining to the issues affecting the 17 or 384 LPAU-IDs capable of being applied to the issues affecting the remaining population of wells?

PARTY POSITIONS

A. Complainants

1. Argument

The Complainants argue that the principles and direction from the Decisions should be applied to the remaining wells not directly before the MGB at the October 2006 hearing. They maintain that a sample was selected expressly to facilitate and give effect to findings made on common issues affecting a large number of wells. In their view, it was understood by both parties and the MGB that this would be the process used to dispose of all of the wells under complaint.

The Complainants believe that the main reason for the Respondent's resistance to applying the Decision arises out of its disagreement with the result, as opposed to there being some

substantive or practical reason for not doing so. The Complainants' see no valid grounds disclosed in the Respondent's materials that might support its position not to apply the previous findings, nor are there grounds which justify holding new hearings for the remaining wells.

Even in instances where the capacity of a device to restrict flow is disputed by the Respondent on the basis that production is occurring below the device, the Complainants believe that that does not prevent the Decisions from being implemented because a) the Complainants are not seeking relief for devices such as tubing plugs or whip stock packers, or instances where the plug has been removed or drilled through since these are not "relevant" to preventing flow; b) these situations are identified and often coded in the records of the EUB and are thus determinable by the Respondent in assessing depth; c) the Complainants are not seeking relief for commingled wells in which production from a lower zone can be shown; d) thus far the Complainants have been candid in accepting the original assessment where the Respondent has identified situations such as those identified above.

The Complainants state that there is no prohibition in law that would prevent the MGB from referring to its prior decisions for guidance, contrary to the position of the Respondent that the MGB cannot be bound to its past precedents. In support of this view the Complainants cited the case of Alberta (Minister of Municipal Affairs) v. Municipal Government Board, 2005, ABQB 866, which was upheld by the Alberta Court of Appeal: 2007, ABCA 217. The Complainants also referred to the Hopedale Developments (47 D.L.R. (2d) 482, O.C.A.) case in the Respondent's Authorities as further support for the proposition that tribunals can develop principles as a guide for making decisions in later cases. The Complainants cite the Baker case in the Respondent's materials to highlight that the right to be heard and duty of fairness are tempered by the process chosen by the tribunal and its institutional constraints. Ultimately, Baker found that an oral hearing was not required where the participatory rights of a party were otherwise satisfied through alternative processes.

2. Evidence of Joe Thibault

The Complainants' witness, Joe Thibault, gave evidence in support of the view that the findings and principles in the decision could be applied across the entire spectrum of wells. His evidence was that there is no conceptual, practical, or logistic reason that the Decisions cannot be applied to the remaining wells. Mr. Thibault indicates in his report that the properties were originally selected for complaint based on a simple review of s. 4.009 of the Minister's Guidelines and the discovery that the assessments for some wells were not capturing well treatments that limited the depth of the well, based on information contained in EUB data received from Geo Vista.

From this initial investigation, Mr. Thibault identified five categories of issues arising across a spectrum of 11,980 wells: 1) Drilled and Cased wells (381 wells); 2) Incorrect Assessed Depth (11,251 wells); 3) Commingled wells (275 wells); 4) Drains (44 wells); and 5) Pool Code 158 (29 wells). From these 11,980 wells, 500 were selected at random as representative of the same issues and categories that were found in the 11,980 wells. The number of wells from each group

of issues was as follows 1) Drilled and Cased wells (78 wells); 2) Incorrect Assessed Depth (361 wells); 3) Commingled wells (20 wells); 4) Drains (12 wells); and 5) Pool Code 158 (29 wells). Categories 3 and 4 were withdrawn at the hearing. The Category 1, 2, and 5 wells proceeded to the hearing. The Category 5 well assessments were confirmed by the MGB. The MGB ordered re-calculations to the Category 1 and 2 wells. Based on the direction from the MGB the recalculations resulted in changes in the assessed value for 139 wells. Mr. Thibault indicated that the Respondent made no issue when the 500 sample wells were originally selected by the Complainants to represent the remaining population, nor did it propose alternative suggestions as to the process to deal with the large volume of well complaints.

In Mr. Thibault's view, the technical process of the Respondent for the 384 wells from the sample takes into account the bridge plug or the latest deepest perforation above the bridge plug in its analysis and implementation of the recalculation direction in the Decisions. Mr. Thibault agrees with the Respondent's methods, and does not question the technical process, records or data used by the Respondent to recalculate the assessments and believes that this same process can and should be undertaken with respect to the wells in the remaining population. He believes that the issues decided in the Decisions are representative of the issues in all of the wells remaining in the last two categories of complaint. Mr. Thibault disputes the Respondent's contention that the wells are not a representative sample since the well characteristics, data, and issues remain identical for the outstanding well complaints. Accordingly, Mr. Thibault believes that there is no reason why the same technical process cannot be applied to the 10,890 remaining wells.

Mr. Thibault introduced schedules A, B, C, and D from his report. Mr. Thibault explained that Schedules A and D are two different versions of the recalculated assessments for the remaining 10,890 wells affected by Category 2 issues. Both versions use Geo Vista perforation treatment data as of November 30, 2005, which in his view is identical to EUB Record 055. Schedule A re-calculates the assessment using the depth of the bridge plug, or the latest deepest perforation above the bridge plug, whichever is the least. Mr. Thibault indicated that he considered only bridge plugs and not packers in determining these re-calculations. Of the 10,890 wells in this category, he indicates that there are 2,732 wells that have been identified as having bridge plugs, and the perforations above these devices are above the depth at which they have been assessed by the Respondent. It is with respect to these wells that MGB 020/07 should be applied to achieve a reduction in the assessment.

Schedule D in his report re-calculates the assessment using the latest deepest perforation as the alternate measure of the wells depth. Mr. Thibault indicated that where there were perforations that occurred below bridge plugs at dates which were later than the bridge plug, the perforation below the bridge plug was used as the depth relied on to drive the re-calculation. Mr. Thibault clarified that the Schedule D calculations (latest deepest perforation only) could be accepted by the MGB as an alternative to the Schedule A recalculations on the basis that where the deepest producing interval could not be identified, the default measure should sensibly be the latest deepest perforation as per s. 4.009 of the Minister's Guidelines. It was his view that the re-

calculations in Schedule A accurately embody the implementation of the Decisions with respect to the category 1 group of wells.

Schedule B of Mr. Thibault's report deals with the re-calculations for the Drilled and Cased wells from category 2. There are 303 of these wells outstanding as 78 were originally part of the sample group before the MGB. For these remaining 303 wells, Mr. Thibault stated that he relied on the latest deepest perforation (as contained in the November 30, 2005 Geo Vista data) to determine the depth used in determining the re-calculated assessments for these wells. Mr. Thibault explained that in 116 of the wells no latest deepest perforation was evident in the November 30, 2005 Geo Vista data, as owners of wells are not required by the EUB to report the perforation until 30 days from the point the work is completed, as opposed to 30 days after the perforation occurs.

Schedule C of the report is a document of the Respondent entitled "Technical Process Used by the DLA to Comply with MGB 112/07". This document was introduced by Mr. Thibault to show the process used by the Respondent to recalculate the assessments for the 384 wells, and in support of his belief that this same process can and should be undertaken with respect to the wells in the remaining population.

3. Implementation Examples

Mr. Thibault introduced a document consisting of eight LPAU-IDs that he had selected from at random from the remaining 11,000 wells (exhibit C-7). Four of these LPAU-IDs (1912165, 2762208, 2793847, 3478675) were taken from the category 1 (Drilled and Cased) complaints, and four were taken from the outstanding population of category 2 (Well Depth) complaints (1987849, 2002189, 2011133, 2027567). The depth selected for each LPAU-ID is identified in the document, as is the corresponding calculation of the assessment using the formulae in schedules A through D of the Minister's Guidelines. The Geo Vista well ticket for each LPAU-ID is attached to the document. Mr. Thibault indicated that the record was taken from Geo Vista data that is derived from November 30, 2005 EUB data, to capture changes to the actual status of the well occurring on or before October 31, 2005. The purpose of the document was to give examples to demonstrate that the direction in the Decisions could be applied to the remaining wells in the population.

For each well LPAU-ID Mr. Thibault went through the process that he believed could be applied to the remaining wells in category 1. For example, LPAU-ID 1912165 is a category 1 well and MGB 020/07 directed that the assessment is to consider the latest deepest perforation. Under the heading "perforation / treatment data" on the Geo Vista ticket for this well, there is an entry for a jet perforation at 145 metres associated with a date of October 23, 2005. This is the most recent perforation and should be the "latest deepest perforation" that is used to represent the depth "n*" variable in calculating the assessment as per Schedule A of the Minister's Guidelines. That value is plugged into the Schedule A formula, and then multiplied by the constants in Schedules B, C, and D, resulting in an assessed value of $400 for this well. In contrast, the depth of the well used

by the DLA to populate Schedule "A" was the true vertical depth, which the well ticket indicates to be 449 metres, resulting in a larger schedule "A" value, and a corresponding increase to the assessment. Mr. Thibault went over a similar process and result in his implementation example for the three other wells in this category.

The implementation procedure described by Mr. Thibault for category 2 wells is similar to category 1. For example, LPAU-ID 1987849 is a category 2 well and as such Mr. Thibault indicated that he considered the bridge plug in his process and the perforation above that bridge plug, as per his interpretation of the MGB's direction. The Geo Vista well ticket indicates that there is a bridge plug installed on July 9, 2002, at 510 meters and a July 10, 2002 perforation above the bridge plug at 457 meters. Accordingly Mr. Thibault used 457 m as the latest deepest perforation for the depth "n*" variable in calculating the assessment as per Schedule A of the Minister's Guidelines. That value is plugged into the Schedule A formula, and then multiplied by the constants in Schedules B, C, and D, resulting in an assessed value of $7,790 for this well. In contrast, the depth of the well used by the DLA to populate Schedule "A" in the original assessment was the gross completion interval in record 075, which the well ticket indicates to be 1337 meters, resulting in a larger schedule "A" value, and a corresponding increase to the assessment. Mr. Thibault went over a similar process and result in his implementation example for two other wells in this category, but acknowledged that with respect to LPAU-ID 2027567 the assessor selected the corrected depth of 1147 meters in calculating the original assessment, and as such sought no change in the assessment for this well. Mr. Thibault indicated that he would discuss with the excel programmer why this LPAU-ID appears in Schedule A or D as a well with a challenged depth, when in fact the Complainants agree with the Respondent's assessment.

Mr. Thibault re-iterated his view that the process that he undertook in the 8 examples given to apply the parameters set by the MGB in its Decisions was the same as the process undertaken by the Respondent in re-calculating the 384 wells in the original sample, as identified in Schedule C of exhibit C-6. Specifically, Mr. Thibault noted that both he and the Respondent had chosen the latest deepest perforation above the bridge plug in applying the MGB's direction when determining the deepest producing interval for a well.

4. Rebuttal of the Report of Berni Brunsch

Mr. Thibault stated that, in general, he did not disagree with the parameters laid out in the evidence of the Respondent's witness, Berni Brunsch; however, he did take issue with some of the LPAU-ID examples chosen by him to call into question the Complainants position. Mr. Thibault further explained that although some of the original sample LPAU-IDs did not result in a reduced assessment, Mr. Brunsch's criticism of the LPAU-IDs originally chosen for complaint by the Complainants does not take into account the fact that at the time they were chosen neither party knew what parameters the MGB would have set out in its decision, or how those parameters would be applied by the Respondent in its recalculations. Where there are wells in Mr. Brunch's examples that did not contain a bridge plug, or where the well was commingled,

Mr. Thibault acknowledged that a reduction may not be warranted. However, Mr. Thibault pointed out that Mr. Brunsch's report identifies 11 of 17 of the wells where the depth selected was less than that chosen by the Respondent in its technical process for recalculating the assessment.

5. Cross-Examination of Mr. Thibault

Under cross examination, Mr. Thibault indicated that he had no training or experience in business process design, database design, electronic report generation, quality assurance, problem resolution, or computer program writing. He did however indicate that he has aided in the management design of a property tax database system, which is offered to his clients. He further indicated that he had little training in statistical analysis or numerical modelling, and that generally the sample of 500 wells was chosen at random to represent different categories of issues, without strict reference to statistical sampling procedures. He acknowledged that he had little or no experience in the field with respect to well licensing, abandoning, or reactivation applications, nor in any servicing, production, or drilling operations.

Mr. Thibault stated that he has directly accessed the data in the records of the EUB, but has not analyzed the monthly extract of EUB data called the GWF, as his analysis is done on the Geo Vista data he receives. He believes that Geo Vista is representative of the data on the GWF, and maintains that the MGB also made this finding in the Decisions. Mr. Thibault further stated that he has never accessed the records of the Petroleum Registry of Alberta.

With respect to Schedules A, B, and D of his report, Mr. Thibault indicated that raw data was pulled from the November 30th 2005 Geo Vista records about each well to populate the spreadsheets in these schedules, using several filters to identify plugs and perforation items. Together with other members of his company, Mr. Thibault spent approximately one week to test the accuracy of this program. He indicated that he would be willing to provide the Respondent with a copy of the program and the raw Geo Vista data used to do this.

Under cross-examination Mr. Thibault maintained his view that it was generally not possible to produce below a bridge plug or perforation. He also asserted that in general, there can be no production from a given formation without a perforation, regardless of the reported interval of a pool.

With respect to EUB record 075, Mr. Thibault stated that there is no such record in Geo Vista; however, Mr. Thibault had spent significant time reviewing and analyzing this record at the EUB. Mr. Thibault conceded that the only information or records produced in his analysis at the present hearing was a Petroleum Registry Alert indicating that 47,000 well records had inaccurate or non-existent records for their gross completion intervals.

When asked why flow prevention devices described in the Petroleum Registry as a "packing device" or a "whipstock packer" is described as a "bridge plug" in the Geo Vista well tickets (i.e.

LPAU-ID 1903501), Mr. Thibault indicated that in his view, Geo Vista makes this conversion to indicate that it was a packer that could not be produced through. It was also indicated that Geo Vista leaves a blank space under the heading "type" to indicate when a well is commingled.

6. Re-examination of Mr. Thibault

Mr. Thibault indicated that, based on his recollection of the Respondent's data on the 500 wells in the sample, the Respondent can access the record relating to the type of flow prevention device by EUB code number.

In conducting his review of the relationship between the deepest producing interval identified in the original assessment and pool formations, Mr. Thibault added that the depth or interval of the producing formations associated with a particular pool often did not match the perforation treatment. With respect to his review of the gross completion interval (GCI), he added that there is no change to the GCI in the EUB record where a zone had been abandoned or suspended.

7. Request for Relief

The Complainants ask that the MGB order the Respondent to produce its recommended or re-calculated assessments for the 11,000 remaining wells applying the same MGB 020/07 principles by which the 384 well assessments were re-calculated. In the event that the Respondent is unwilling to do so, the Complainants request that the MGB implement the re-calculations on its own accord using the information supplied by the Complainants in either Schedule A or D for the Category 1 issues, and Schedule B for the Category 2 issues.

B. Respondents

1. Argument

The Respondent states that in previous correspondence the MGB identified two matters that it wished to hear evidence on at the present hearing with respect to the outstanding wells issue: (i) whether the wells subject to MGB 020/07 were a representative sample of the approximately 11,000 wells remaining to be scheduled; and (ii) whether MGB 020/07 could be applied to the unscheduled wells for the 2006 tax year. The Respondent stated its concern that by framing the issues in this manner the Board appeared to have already ruled out any other processes or alternatives. In its view, the present hearing is a merely scheduling hearing to explore alternatives with respect to the process to follow to resolve the 11,000 wells remaining for the 2006 tax year.

The Respondent believes that there are only four situations in which it might be appropriate to apply the direction in the Decisions to the remaining wells:

i) If the Respondent were to agree to apply the direction in the Decision to the remaining wells. The Respondent submits that the record of correspondence and proceedings contained in exhibit R-15 indicates that since the outset of this complaint it does not, nor has it ever agreed to this method;
ii) If the MGB finds that it has the statutory authority to compel the Respondent to resolve complaints in this manner. The Respondent submits the Board does not have such authority;
iii) If the MGB finds that it has the statutory authority to treat one of its decisions as a binding precedent to be used to resolve complaints on the remaining 11,000 linear properties. The Respondent submits that the Board does not have this authority; or
iv) If the Complainants discharge their onus to prove that the wells subject to the Decisions are a representative sample of the unscheduled well complaints.

With respect to option two above, the Respondent states that the MGB must make its decisions based on the evidence and argument put forward in each complaint at each hearing. In support of this view it cites the MGB's decisions in MBG 124/04, and MGB 036/07, in which the MGB refused to apply MGB decisions from previous years in cases where a similar complaint on similar issues had been decided. MGB 068/07, an equalized appeal decision of the MGB, was also cited by the Respondent as further support for the proposition that fair procedure and statute require the MGB to hold a hearing and hear argument for each complaint.

With respect to option three above, the Respondent argues that a tribunal cannot use its own past orders as a binding law. This general statement of the law has been accepted by the Alberta Courts: Medicine Hat College v Alberta (Public Service Employee Relations Board), [1987] A.J. No. 529. A tribunal must examine each case before it on its own legal and factual merits, while following any binding guidance from the Courts. This gives a tribunal the needed flexibility to evolve its decision-making and respond to specific circumstances, while following the law. A Board falls into error if it fails to revisit and, if necessary, refine or abandon its prior statement of the law. Where a tribunal does this, it fetters its discretion. Any resulting decision is a nullity: D. Jones, *Principles of Administrative Law* (3rd Ed.) p. 177; Hopedale Developments Ltd. v Oakville (Town) (1964) 47 D.L.R. (2d) 482.

The Respondent believes that the Act, the MGB Procedure Guide, and past decisions and practice of the MGB give rise to a legitimate expectation that the MGB will comply with Part 12 of the Municipal Government Act, with its practice, and schedule each of the 2006 tax year well complaints for a merit hearing with oral evidence.

With respect to option four, the Respondent stresses that it does not bear the onus of disproving that the sample wells are representative; the burden of proving representativeness rests with the Complainants. It is the Respondents position that, in either event, the evidence before the MGB strongly supports the position that the 500 wells subject to the Decisions are not a representative sample of the unscheduled well complaints. In its view, there is no factual nexus between the findings made in the Decisions and the remaining wells. As such the Complainants have not

discharged the onus of proving that the sample wells are representative of the remaining population.

Furthermore, the MGB had decided to continue the original hearing and it now has evidence before it at the present hearing that disproves the findings in the Decisions. The MGB even stated in the Decisions that it would have liked further evidence about EUB records, well completion events and flow prevention devices in MGB 020/07. The Respondent therefore believes that the Decisions are interim orders, and that the entire matter remains open as the MGB has not yet exhausted its authority and made a final order pursuant to s. 499(1)(b) to change the assessments for any of the wells. In support of this view, the Respondent cited several authorities found at tabs A to F of exhibit R-25.

The Respondent maintains its position from the October 2006 merit hearing, that under s. 292 of the Act it is not the physical condition of the linear property at October 31st that must be considered, rather the specifications and characteristics of the linear property that are found in the EUB records as of October 31st. It cites the different language used for market value assessments in s. 289 of the Act, and *Driedger on Construction of Statutes* in support of its interpretation.

The Respondent further maintains that Section 4.009 of the 2006 Minister's Guidelines contains a finite selection of defined data elements and prescribes the order in which they are to be selected. The Complainants are asking this Board to re-write the Minister's Guidelines by changing the definition of "deepest producing interval" to be Record 055. Only the Minister has the authority to amend or re-write the 2005 Minister's Guidelines. Furthermore, argues the Respondent, the Complainants' request, if accepted, would create inequity. Equity in relation to linear property means the consistent application of the legislation that is applicable to the particular type of linear property. In support of this view, and the MGB's previous approaches to this issue, the Respondent cited the MGB's decisions in MGB Board Orders 287/98, 089/02, 135/03, 133/03, and 117/04.

The Respondent submits that the new evidence at the present hearing disproves the MGB's previous findings in MGB 020/07, and the MGB must now reschedule a new hearing to deal with all of the wells under complaint, inclusive of the 384 wells that were heard and decided in MGB 020/07. The MGB must also direct that the same data source – the EUB General Well File – be used by both parties at such a hearing. This is a further option available for the MGB which has not yet been explored due to the MGB's fixation on applying the Decisions to the remaining wells. The MGB cannot apply the findings from the Decisions as new evidence indicates that those findings are not factually accurate. The Respondent also states that it would be incorrect in fact and law to apply the Decisions to the remaining wells, as doing so presupposes the following:

(i) there was adequate disclosure of the Complainants' evidence prior to the October 2006 hearing such that the Respondent knew the case to be met;

(ii) the MGB in the October 2006 hearing heard comprehensive expert testimony on the EUB's records, well completion events and devices;

(iii) the presence of a bridge plug or packer automatically means that production is not possible from below that device;

(iv) production is always occurring from the latest deepest perforation;

(v) in coming to the conclusion the November General Well File shows a better picture of the EUB's records as of October 31st, than the October General Well File, the Board had empirical evidence from the November and October General Well Files on which to base their decision;

(vi) the 17 wells the MGB actually heard evidence on in October 2006 relative to well depth issues are a representative sample of the 384 wells and by extension the 11,000 wells. There are no findings to this effect in MGB 020/07.

The Respondent cites a lack of meaningful disclosure of the Complainants' case at the original October 2006 hearing as a further reason not to apply the Decisions to the remaining wells. As a result, the Respondent argues that it did not know the areas it was required to research and the type of witnesses that would be needed. Not only did this breach the principles of natural justice, it also resulted in incomplete and inaccurate evidence being presented to the MGB. The MGB in turn was forced to base its decision on incomplete and inaccurate evidence, resulting in a decision that is flawed. These incorrect findings would only be perpetuated if the MGB were to order that they must be applied to the remaining 2006 tax year complaints in the interest of expediency. As guidance to the MGB of the proper principles to be considered when determining whether meaningful disclosure has been made, the Respondent referred the MGB to the cases Canadian Engineering and Surveys (Yukon) v. Banque Nationals de Paris (Canada), [1995] A.J. No. 1189 (Q.B., aff'd A.C.A.); and Nortel Networks Inc. v. City of Calgary & the MGB; Ag Pro Grain Management Services Ltd. v. Lacombe (County) [2006] AJ No. 585; Baker v Canada (Minister of Citizenship and Immigration) [1999] 2 S.C.R. 817. In light of the principles in these cases, the Respondent states that it had a legitimate expectation to receive meaningful disclosure of the Complainants' case so that the Respondent was provided with an opportunity to present the other side of the matter.

The Respondent takes issue with the Ontario case of Metropolitan Toronto Housing Authority v. Godwin [2002] O.J. No. 2514 (C.A.) which the Complainants have cited in support of the proposition that the MGB can apply the findings on a few cases to many like cases. It believes this case can be distinguished on the basis of its facts, legislation, and the jurisdiction of the landlord and tenant board in Ontario. The Respondent agrees that the MGB has the authority to control its procedure, but in doing so it must have regard for its entire statutory framework, past practice and the principles of natural justice and procedural fairness.

The Respondent also states that its witnesses are better qualified to give the MGB the evidence they required to decide the relevant issues. In its view the Complainants' witness is not qualified to give the opinions to the MGB about the matters at hand. In support of this view, it referred the MGB to R v J (J.L.) 2000 S.C.C. 51 at para 28, Alberta (Workers' Compensation Board) v.

Alberta (Workers' Compensation Board Appeals Commission) 2005 ABCA 276, [2007] 7 W.W.R. 611 at para 67) and *Practice and Procedure Before Administrative Tribunals*. A summary of the evidence of the Respondent's witnesses is outlined below.

2. Evidence of Dr. Edward Thompson

In support of the Respondent's position that the 384 wells were not a representative sample of the remaining wells, the Respondent called Dr. Edward Thompson as its witness. Dr. Thompson holds several degrees and accreditations in Engineering including a Ph. D. in Mechanical Engineering. Dr. Thompson has thirty years of professional engineering experience in numerous different areas including mathematical modelling, oil and gas design, and project engineering and management. Dr. Thompson also clarified that his senior academic qualification is a doctor of philosophy degree, and his thesis was on the subject of mathematical modelling, going from small into large, similar to the subject matter now before the MGB.

In evidence, Dr. Thompson suggested that the ability of the sample to be representative of the remaining population was doomed from the outset due to the selection procedures (or lack thereof) by which the proposed sample had been selected. The selection of the sample was not done using accepted statistical procedures. If the selection of the sample is not undertaken using accepted statistical procedures then the sample cannot be used to draw conclusions about the entire population. Furthermore, Dr. Thompson points out that the sample is constituted of only 10 wells from category 1 and seven wells from category 2. Given the size of the population, the examination on this sample is too small to draw reliable inferences about the population. The final stage in the analysis to determine a representative sample, involves an understanding of the characteristics of the sample as compared to the characteristics of the population, and this type of statistical analysis has not been done by the Complainants.

Dr. Thompson observed a lack of clarity in the Board Orders and written material about what constitutes a sample and when that sample is representative of the population. In his opinion, the definition of a sample is that which is used; MGB 020/07 was based upon a sample of only 17 wells, as the evidence on the remaining 367 wells was never put before the MGB. In any event, neither the 17 wells nor the 384 wells were a random sample, but a "haphazard" sample, and to consider a haphazard sample to be a random sample leads to error. Dr. Thompson stated his disappointment that only a sample of 17 well records were tested by the Board in MGB 020/07. He commented that it was unfortunate that the Decisions did not provide any guidance regarding how the Board moved from the 17 well records to the 384 wells. MGB 020/07 contained no analysis of the 17 records to demonstrate that the Board had confidence to expand their thinking on the 17 records to 384 records. It was Dr. Thompson's view that the Board's reasoning amounted to a leap of faith. Dr. Thompson concluded that the sample of 17 bears no relationship to the 384 and no relationship to the 11,000 remaining wells.

Another caution asserted by Dr. Thompson regarding the sample of wells chosen was that the person selecting the sample needed to be very careful so that personal preferences as to the wells

chosen do not bias the sample for which they have been selected. In his report (Exhibit R-19), Dr. Thompson cites the following passage from 'A Philosophical Essay on Probabilities', published in 1814 by the famous mathematician Marquis de LaPlace, in support of this caution:

> "Our passions, our prejudices, and dominating opinions, by exaggerating the probabilities which are favourable to them and by attenuating the contrary probabilities, are the abundant sources of dangerous illusions."

Without an awareness of potential bias in the selection of the sample, Dr. Thompson commented that a person could well design an experiment to find exactly what they were looking for.

Mr. Thompson also raises the following points in his report:

- Sample Definition: The sample used for statistics inference must adhere to accepted standards in terms of random selection and accuracy. If these standards are not achieved the sample cannot be used without additional analysis. There was a lack of definition or standards applied by the MGB as to what would constitute an acceptable sample.
- Sample Accuracy: If the sample contains errors or inaccuracies, then when transferred to the population the errors will be magnified. This topic is intuitive in nature: if the sample contains errors or inaccuracies subsequent analysis will be limited. The Complainants' proposed sample is not error free, as shown by the report of Mr. Berni Brunsch (Exhibit R-20).
- Method of Sample Selection: The fact that there is no information with respect to the mode of selection of the sample leaves doubt that the 384 sample is a valid representative of the population and any resulting inferences are meaningless;
- Sample Size: The 6% sample size is acceptable for statistical measurements if there is information about the distribution, or shape or general characteristics of the sample and the population from which the sample was derived. One cannot know this information without knowing the test(s) to which each record of the sample was subjected, the resulting sample statistics and the similarity between the 384 sample and the population
- Testing of the Sample: The sample that was subjected to inspection was not 384 wells (properties) but rather 17. This means that the sample inspected by the MGB represents less than 0.3% of the 2006 population of 5,800 or less than 0.14% of the 12,000 properties under complaint. This sample is far too small a measurement for significant statistical testing without greater knowledge. Dr. Thompson's observation that the MGB only investigated 17 records is sufficient in his view to limit any further discussion on the topics on a sample at the 020/07 hearing being utilised on the balance of the linear properties under complaint.
- Characteristics of the Sample and Population Distributions: The objective of this is to inspect and define the characteristics of the sample(s) and the population and undertake the measurement of differences between the characteristics of the sample(s) and population. Thus if the measured differences are insignificant one might conclude that the

> distributions of the sample and the population are similar and that results between sample and population can be transferred with a reasonable level of confidence. In the present case a brief inspection of these statistics indicates that the characteristics of the inspected sample are different and in some respects the differences are significant. As a result the sample of 17 (or 21) cannot be used for statistical inference on the 384 sample

Dr. Thompson's report also indicates that generally speaking, he agrees with the IAAO reference that "Most statistical procedures rely on samples because of the time and expense of attempting to obtain data on all items in the population." Specifically, he agrees that this statement is applicable when the population is unknown in terms of size and parameters, as is the case in most exercises utilising statistical inference, e.g. ratios studies for equalisation purposes.

He is of the view however, that based on this series of complaint hearings, the whole population of wells is known, and the descriptive parameters of the population of wells are also known to the Board and both parties. This leads him to conclude that a representative sample may not have been necessary in this case, as the Board and the parties have access to the whole population.

During direct examination, Dr. Thompson indicated that it appeared to him from the previous hearing relating to the application of the Decisions to LPAU-IDs 3480996 and 2039318, that the root cause of the disagreement over the LPAU-IDs is a disagreement over two separate records or databases. Thus he surmised that the chance that the parties will agree on the application of the Decisions to the remaining wells is also remote given that the disagreement over databases is pertinent to these wells also. He stressed that it is important that the parties be working from the same database in order to make the process for dealing with the remaining wells an efficient one.

Finally, Dr. Thompson suggested that this was not a mathematical problem in which statistical analysis and inference was the relevant issue. The MBG in this case does not need to consider or contemplate any exercise in amateur statistics because all of the known characteristics and parameters are before the MGB. The true issue in his view is data manipulation. The data simply needs to be manipulated and organized in a fashion that would allow the MGB to apply the principles of adjudication.

Based on the concerns illustrated above, Dr. Thompson's final conclusion was that the wells before the MGB at the October 2006 merit hearing are not representative of the balance of the properties remaining. It would thus be improper for the MGB to derive any statistical inferences from the sample as such inference would yield meaningless results.

3. Cross-examination of Dr. Thompson

In cross-examination, Dr. Thompson confirmed that much of his report was dedicated to the question of whether the sample was properly selected and tested such that it could be considered as a valid representative sample. Dr. Thompson reinforced his idea that if there is an error in the data within the sample the sample is improper, and the statistical conclusions about the sample

are improper. Therefore the principles drawn are also in error, as are any conclusions drawn from those principles.

Dr. Thompson stated that in his view the use of a sample size of 17 did affect the accuracy or clarity of the principles in the Decisions. Furthermore, he reiterated his view that it was highly improbable that the sample was selected at random. He felt that the MGB did not think through the problem properly in writing MGB 020/07. There is no description in MGB 020/07 of how the MGB used the record of 17 wells to get to 384 wells. Dr. Thompson himself indicated that he was uncertain as to how the panel did that, so he can only speculate.

When questioned about the strength of a legal or statistical precedent, and its relation to the number of cases that have been heard, Dr. Thompson commented that, in his experience and to his amazement he had seen instances where lessons learned from one have been applied to others within the framework of a tribunal or board, though he acknowledged that he was not an expert on the subject of legal precedent. Dr. Thompson clarified that if a set of facts from a single case were going to be relied on as a precedent, it would need to be error free, and the cases upon which it would be used identical. He re-iterated the need to be error free during questions from the MGB. In such a case, one would probably be on solid ground to apply that precedent.

When asked what it was about the remaining population of wells that made them distinct, Dr. Thompson indicated that his findings in his tests applied to the sample and population relative to such things such as average, broadness, height, skewness, and dispersion, indicate that the characteristics of the 5 “databases” are significantly different.

Dr. Thompson indicated that he did not examine what was before the MGB as evidence on the 500 wells versus what was given in testimony to the MGB on the 17 wells at the October 2006 hearing. In his review of the transcript, he saw nothing that suggested that the Respondent was limited to referencing any of the 500 wells in evidence. He acknowledged however, that his review of the transcript was quite limited.

4. Evidence of Berni Brunsch

The Respondent called Mr. Brunsch as a witness with expertise in the area of the EUB’s records well devices, and well completion events. The curriculum vitae of Mr. Brunsch indicates that he has 27 years of experience specializing in operations, regulatory and measurement aspect of the oil and gas industry. The purpose of his testimony was to provide an analysis of the wells referenced in Mr. Thibault’s evidence, with the objective of ensuring that the MGB has accurate and factual information regarding the 17 wells in MGB 020/07 upon which to make its decision regarding the validity of the sample set provided as being representative of the whole population of the wells under appeal. To that end, Mr. Brunsch views Mr. Thibault’s evidence and analysis as being incomplete, leading to misinterpretations of the data. The misinterpreted data in his Geo Vista well tickets relating to the production status of the wells has also influenced the conclusions drawn by him and presented at the hearing.

There were three main areas of analysis that Mr. Brunsch focussed on to illustrate what he believed to be faulty interpretations, conclusions, or data of the Complainants:

1. The conclusion that one cannot produce below a bridge plug or packer;
2. The Complainants' interpretation of the Geo Vista well tickets with respect to the producing interval and packer installations; and
3. The completeness of the information contained in the Geo Vista well tickets.

With respect to the first area of analysis Mr. Brunsch testified that it is incorrect to assert that production below a bridge plug is not possible, and that Mr. Thibault's position that the existence of a bridge plug or packers and cement means that everything below the placement of these elements is no longer accessible or restricted, is also incorrect. Bridge plugs can exist in both the tubing and the casing, and depending on how they are reported, it may not be possible to distinguish these two different types of plugs. As it is possible to produce from below a tubing through plug, it cannot be said with certainty that production is not possible below all bridge plugs found in the EUB records.

Using a power point presentation, Mr. Brunsch explained the way in which packers and bridge plugs are used. It was Mr. Brunsch's evidence that packers are not flow restricting devices in that they do not shut off flow. In his view, production below packers occurs in tens of thousands of wells throughout Alberta. Mr. Brunsch provided some hypothetical examples to illustrate situations where production below a bridge plug or packer is possible. Two such examples were given with regard to Dual Completion and Dual Completion with parallel tubing strings. Those examples are also illustrated at pages 15 and 16 of his report. Mr. Brunsch also gave hypothetical examples where plugs and packers are inserted for remedial purposes to seal off or suspend flow from other zones. Once the remedial work is done, the plug can be removed. Accordingly, this is contrary to the Complainants' position that the presence of a suspended zone and a packer or plug precludes production from the lower zone.

With respect to his second area of analysis, Mr. Brunsch stated that bridge plugs and packers can be opened or closed. Furthermore the Geo Vista data does not identify what type of plug is in place, because all plugs are classified as "bridge plugs" in Geo Vista. As a result, Mr. Thibault's analysis of the well tickets should have considered information other than simply the presence of a packer to determine where the well is producing from. Mr. Brunsch also stated that Mr. Thibault's analysis fails to consider situations involving commingling of multiple zones within the wellbore as the Geo Vista well tickets do not recognize commingled wells because the "mode" or well status portion of the well records are blank.

With respect to his third area of analysis, Mr. Brunsch believes that there are many instances within the references to bridge plugs and packers on the Complainants' well tickets that do not accurately reflect the placement of the bridge plug or packer. Bridge plugs or packers are often used to do remedial work and can be of a temporary nature. Mr. Brunsch testified that the well tickets relied on by Mr. Thibault continued to show temporary bridge plugs which had been

removed prior to October 31st. Mr. Brunsch also stated that Mr. Thibault's evidence with regard to the physical existence of bridge plugs in the subject wells was not accurate, given his reliance on incomplete Geo Vista well records and a misunderstanding of the information contained in those well records. Mr. Brunsch also testified that Mr. Thibault relied on well tickets which contain filtered information. For example, the well tickets do not recognize commingled wells because the mode or well status portion of the well records are blank.

Outside of these three areas of analysis, Mr. Brunsch also gave evidence to the effect that there is no backlog of information at the EUB and the electronic reporting databases provide operators with the ability to report changes on well status and events in near real time. EUB records are updated from the Petroleum Registry every 10 minutes. Operators have the ability to report changes to well licenses, well statuses and well completion data (setting and removing plugs and packers; reporting the insertion of a packer and reporting the removal of a packer) via this electronic system and, like the Petroleum Registry, the data is submitted to the EUB on a real time basis. In summary, Mr. Brunsch believes that if information is submitted on October 31, then it will show up in the records of the EUB on October 31.

Mr. Brunsch also directed the MGB to several pages of information pertaining to wells taken from the Petroleum Registry of Alberta (PRA). Those pages contained information regarding such things as perforations, packer data, drill stem test dates, directional drilling dates and well event details. The "Packer data" identifies both packing devices and whipstock packers using the same code that the EUB uses. If it is identified as a packing device, it can be used to stop flow; if identified as a whipstock packer, its only purpose is to deviate the drill string to obtain a deviated or horizontal well. Accordingly, Mr. Brunsch stated that if you have a code that identifies a packer, one must look further to see the use to which that device is being put.

As an example, Mr. Brunsch focussed the MGB on License 0336835 on page 1 of Tab 4 of R-17. The information shows a finish drilling date of September 28, 2005, and a crude bitumen pumping status as of October 1, 2005. The GCI and the perforation events are consistent in that they both show a top and a base of 603 to 608 meters. Therefore, from looking at this information page it can be determined where production is occurring from and what the operator is doing with the well.

Mr. Brunsch introduced examples of his analysis using some of the LPAU-IDs from last year's hearing, in addition to several other wells from the 2006 complaint that were not part of the group directly considered by the MGB in MGB 020/07. For example, Mr. Brunsch identified LPAU-ID 1898444, an LPAU-IDs that was withdrawn before the MGB in the October 2006 hearing. According to Mr. Brunsch's review of the transcript, this well was withdrawn on the basis that Mr. Thibault identified a producing interval, based on the initial production data in the transcript. However, Mr. Brunsch indicates that the well ticket information for this well at Tab 7 of R-15 is not production data, but rather is test information about the well. Accordingly, Mr. Thibault's characterization of this well as producing was incorrect, according to Mr. Brunsch. It is also an indication that the Geo Vista well tickets do not have information to identify whether

or not the well is gas-flowing. The use of this data element in this manner also might also have resulted in Mr. Thibault interpreting some wells as not producing, when in fact they may have been.

Mr. Brunsch identified LPAU-ID 1892108, a well that was before the MGB in the October 2006 hearing. This LPAU-ID was offered as an example to support the proposition that the Geo Vista records do not discriminate between packers and bridge plugs, and that this has an effect on determining the proper producing interval. Mr. Brunsch contrasted the PRA records for this well in Tab 4 of R-17 with the corresponding Geo Vista records at Tab 7 of R-14. The PRA identifies a "Packing Device or Whipstock Packer" in place as of December 15, 1998, whereas the Geo Vista records refer to the same device as a Bridge Plug. Mr. Brunsch further analyzed the information in both records to conclude that the well was producing from an interval base of 645.55 meters, notwithstanding that there was a shallower perforation above the packing device. The existence of this device, unless there is further investigation as to its nature, may lead to the faulty conclusion that production cannot occur from below the packing device, and that the assessor should have gone to the latest deepest perforation at 575 meters. Mr. Brunsch indicated that the appropriate depth for assessment purposes was therefore the original depth of 645.5 meters, and not the 575 meters requested by the Complainants, representing the perforation above the flow preventing device.

As a further example of his analysis of Mr. Thibault's conclusions, Mr. Brunsch presented LPAU-ID 2065052, found in PRA records at Tab 4 of R-17, with the corresponding Geo Vista records for this well at Tab 7 of R-14. This example was given to show that the Geo Vista Records did not recognize a commingled situation, and thus Mr. Thibault requested a latest deepest perforation depth of 575 meters, when in fact the PRA data indicates that this well was producing at an interval of 573.5 to 732 meters. Mr. Brunsch indicated that the appropriate depth for assessment purposes was therefore the original depth of 732 meters, and not the 575 meters requested by the Complainants.

Mr. Brunsch also selected several examples of wells from outside of the sample at the October 2006 merit hearing, and went over these examples to support his conclusions about Mr. Thibault's analysis. This included an extensive review of Mr. Thibault's requested depths in Exhibit C-16 from the October 2006 hearing, and a comparison of this information with that found in Tab 9 of Exhibit R-17 from the present hearing. One such example was LPAU-ID 1975285. From looking at the information about this well, Mr. Brunsch concluded that Mr. Thibault had incorrectly interpreted data about the packing device in this well. In his view, the data indicates that this well was a water injection well, and as such a packer would only be used to protect the casing from the water being injected up the casing; it would not be preventing flow below the packer through the tubing. Accordingly, this packer should not be considered and in any event, its depth did not match the depth requested by Mr. Thibault.

Mr. Brunsch concluded that of the 17 wells originally before the MGB, in two cases the requested depth of the Complainants failed to take into account the gross completion interval, while also failing to take into account commingled zones.

Mr. Brunsch reviewed an additional 19 wells of the 500 in the original sample and concluded that three cases failed to take into account commingled zones, seven cases failed to take into account the gross completion interval. In seven more cases, no plugs or perforations were present. In two cases the Complainants selected an abandoned zone as the depth requested for assessment.

Finally, Mr. Brunsch reviewed an additional 30 wells chosen at random from the remaining population outside of the sample and concluded that three cases requested depths beyond the October 31st assessment date, two cases did not recognize abandoned zones or sections, five cases failed to recognize the production zone, in four cases there was no recognition of co-mingled zones, and in one case there was a latest deepest perforation as the requested depth that did not occur in October, 2005. In many cases, the depth requested by Mr. Thibault was not found in the Geo Vista tickets or in EUB data.

5. Cross Examination of Berni Brunsch

In cross-examination Mr. Brunsch clarified that there are various types of bridge plugs, some of which block the entire casing in a well. However, he did not agree with the general proposition that these types of bridge plugs cannot be produced through. As an example, Mr. Brunsch referred to code 5 in Table 18, from Guide 59 in R-13, which is the EUB code used to identify a through-tubing bridge-plug. He indicated that it is a requirement to register this type of device, and that the EUB packer code 5 would be the only code that determinatively identifies the type of plug that can be produced through. Though he conceded he had never physically installed this type of plug and did not have specific knowledge as to the method in which they were installed, it was his assumption that such a plug could be produced through. He further conceded that it may be that such devices could not be produced through, and that it may be that a through tubing plug refers to the type or the method in which the plug is inserted. He could not comment on the prevalence or incidence of these types of bridge-plugs, as he had no information about such numbers. Mr. Brunsch added that the oil and gas industry is constantly developing new and innovative technology related to plugs, but he doubted that he would be able to discriminate between the different types of plugs.

Other than through-tubing plugs, Mr. Brunsch indicated that EUB code 2 in Table 18, which identifies a plug as a “bridge plugs or whipstock packer”, may be a further example of a plug that could be produced through. A whipstock packer simply deviates the drilling direction and is not used to prevent flow. Thus if a code 2 appeared in the EUB records, further investigation would have to take place based on information about the well before you could determine if the device was in fact a bridge plug packer (which in his view cannot be produced through) or a whipstock packer (which in his view can be produced through).

With respect to EUB code 53 from Table 14 of Guide 59, which is associated with "Packing Device (cement retainer, bridge plug) capped with cement, Mr. Brunsch conceded that if those devices were intact, they could not be produced through. However, they could still be removed or drilled through to enable production to occur from below. He acknowledged that if the devices were removed in this manner, that would need to be reported to the EUB. He further indicated that he had observed that a packing device with cement in the PRA was considered as a bridge plug with cement in Geo Vista, and both were a code 53 device. He conceded that for the purpose of determining whether the device could be produced through, it was immaterial whether the device was referred to as bridge plug with cement or packing device with cement.

Mr. Brunsch agreed that the new devices and technology being developed by the oil and gas industry, specifically sleeves or sliding sleeves, were not required to be registered in the records of the EUB when they were inserted. The new devices would not be described in the EUB records as "topped with cement".

With respect to those devices that were inserted for remedial purposes, Mr. Brunsch indicated his view that if the repair was to be done immediately, the device need not be registered at the EUB. However, he also indicated that this can depend on the intent of the owner. If the device was in place well before the owner intended to effect the repair, then the device would need to be registered. Generally, if the device is to be left in the well, it should be recorded, however, Mr. Brunsch was not certain whether owners did or did not comply with that practice.

Mr. Brunsch clarified that his testimony about the types of bridge plugs or packers pertained to his general knowledge of these devices and did not pertain to the status of the specific devices in any of the wells presently under complaint.

With respect to Mr. Brunsch's LPAU-ID 1892108, Mr. Brunsch re-iterated that the GCI for this well was updated after the packer or plug was in place, and that it still showed a producing interval between 555.0 m and 645.8 m part of which occurs below the packer or plug found at 610.00 meters. This is corroborated by the PRA data indicating that production is coming from two separate pools (Milk River A and Medicine Hat A) each located in zones above and below the plug.

When questioned about his analysis of LPAU-ID 1990753 at Tab 8 of R-14, Mr. Brunsch clarified that he would not assume that a packer that was in place on May 29, 2002 at 1272.00 meters would be the deepest producing interval for the purpose of the assessment, nor would it be preventing production from below the packer, since the owner reported that the well was producing on June 1, 2002, from an interval of 1281.5 to 1283.5 meters that is associated with a perforation event dated May 29, 2002.

Mr. Brunsch maintained that with respect to both of the scenarios above, it was far more likely that production was occurring from the GCI below the plug than the possibility that there was some other reporting error (i.e. erroneous registration of pool code or failure to amend the GCI

when suspending the well), leading one to believe that the device was blocking production. However, in order to be definitive, Mr. Brunsch indicated that further detailed investigation would be needed.

Mr. Brunsch indicated that he is not familiar with and has not used the EUB GWF, nor has he seen the Respondent's analysis of the GWF data or analysis relating to the wells at issue.

6. MGB Questions

Mr. Brunsch summarized his view that the main shortcomings in the Geo Vista data pertained to its failure to identify whether wells are commingled, and its failure to identify the GCI.

Without knowledge of the GCI, it cannot be determined what event is associated with production, and what perforations are included within the production zone. If one knows that a well is commingled, one can analyze up-hole or down-hole to determine where production is occurring. There may be production from the same zone notwithstanding that the perforations intervals change within the same zone. In such a case the additional perforations would not necessarily signify a new event.

7. Evidence of Bruce Ney

Bruce Ney is a P.Eng. with a B. Sc. in Mechanical Engineering and 32 years experience as a consultant in system development.

Mr. Ney took the MGB through his report (exhibit R-16) and discussed his conclusions with respect to the EUB GWF and the Geo Vista well ticket data of Mr. Thibault, which re-iterated the conclusions of Mr. Brunsch that the Geo Vista data was lacking information or had different information than that found in the GWF. Furthermore, the tickets are also not conducive to any form of electronic analysis. Since the GWF and the well tickets differ, it is impossible to achieve agreement between the parties about the meaning of the data. Differences in data cannot be used to challenge the assessment process of the DLA.

Mr. Ney also discussed Records 075 and 055 from the GWF, and the difficulties involved with late reporting of well information relative to using a GWF edition later than the October version.

With respect to the analysis and interpretation of data Mr. Ney highlighted the following points:

- Data is neutral and self-disclosing;
- Standardized approaches to data-analysis are essential;
- Assumptions about data must be documented and tested;
- The importance of having a definite point in time at the root of any data analysis;
- Different data produces different output values and different deficiencies.

Mr. Ney also discussed generally his views on page 12 to 13 of R-16 as to what should be done with respect to analyzing large volumes of information containing complex and significant differences in interpretation and application.

Mr. Ney introduced Tab J of R-16 to the MGB, and outlined the wells outside of the original sample of what were in his view, oddballs and outliers in the different data sets of Mr. Thibault which required further clarification. As an example, it appeared to be the case that over 5,300 wells changed from category 2 complaint (Drilled and cased) to a category 5 complaint (Pool code 158).

Mr. Ney gave an example at Tab G of R-16 of a pattern analysis that could be done with respect to large volume complaints such as the present one. The example given considered the remaining wells in the population from category 1 (drilled and cased). In this analysis, Mr. Ney identified that over two-thirds of the wells did not have relevant perforation events effective on or before October 31st as indicated in the November GWF.

Mr. Ney presented a further analysis looking at the vintage of the last record change for completions in all of the remaining wells for category 1 and 2 at Tab F of R-16. The purpose of this analysis, stated Mr. Ney, was to convey to the MGB the small number of properties affected by using the November GWF versus the October version.

Finally, Mr. Ney gave an example of an analysis of the October 2005 date that well status events and finished drilling events were reported to the EUB and picked up on the October GWF. Mr. Ney drew no conclusion as to this analysis.

8. Cross-Examination of Bruce Ney

Under cross-examination, Mr. Ney confirmed that he assisted the Respondent with respect to the analysis and re-calculation of the 384 wells from the sample before the MGB in MGB 020/07, and that this was done using the EUB GWF and information from ALPAS. He did not access any of Mr. Thibault's November 30th Geo Vista Well tickets. The re-calculations and analysis were accomplished through the development of a program that recognizes the devices in EUB record 055, as per the MGB's direction in MGB 020/07. That process is detailed in exhibit R-1(b). A considerable amount of time was spent determining and documenting the process, as well as writing and testing the code. However, the program was written on an expedited basis and was not tested as thoroughly as would have been the case under normal circumstances.

Mr. Ney acknowledged that he had not yet attempted to run the re-calculation program on the remaining wells outside of the 384 already re-calculated. When asked why he could not have done so, he indicated that he had not been so instructed by Chris Uttley, a Director at the Assessment Services Branch of Municipal Affairs and Housing.

When asked about the comparison between the GWF and the PRA data, Mr. Ney indicted that he had conducted a cursory analysis to affirm that the information between the two data sources was identical. However, he was uncertain whether or not shoe set depth of a well was contained in the PRA, although he was certain that the GWF contained this information. He also conducted a brief comparison of the EUB codes for bridge plugs or other devices in wells in the EUB data and the corresponding descriptions for these devices in the PRA data, and was of the view that there was alignment between the EUB code for the device and the PRA description.

Mr. Ney confirmed that, beyond his evidence at the present hearing, there were no other new facts or evidence that he was previously unaware of at the October 2006, which had since been discovered but not presented at the previous hearing.

9. Evidence of Chris Uttley

Chris Uttley is the Director of Linear Property Assessment at the Assessment Services Branch of Municipal Affairs and Housing. During the hearing the parties agreed that in the interests of time, Ms. Uttley would not give oral testimony, but that the contents of her report (R-18) would be adopted as her evidence a the hearing.

Her report reviews the relevant past decisions of the MGB in this matter, and describes the preparation of the subject assessments having reference to the October GWF and applicable legislation. The report concludes that the data and EUB records used by the Respondent match the direction and procedures in the legislation. In her view the EUB records as of October 31 are the only records to be used to generate the assessment. The Complainants' data on the other hand does not contain some of the relevant fields necessary to properly apply the legislation to prepare the assessments. As such, Ms. Uttley believes this is a complaint against policy choices in the legislation. Ms. Uttley recommends that the assessments be confirmed since the Minister's Guidelines have been applied correctly or alternatively that the remaining wells be scheduled to a merit hearing.

10. Relief Sought

Based on its evidence and argument, the Respondent submits that the only process supported by the evidence and the Board's enabling legislation, is to vacate its interim decisions MGB 020/07 and DL 112/07 and schedule all of the 2006 tax year complaints to be heard at a future merit hearing, which it estimates could be accomplished in a 2-3 week period. The Respondent further requests that the Complainants be directed to use only the EUB General Well File as part of their evidence in the event that a new hearing is directed.

FINDINGS – Issue 2(a) & (b)

1. The Record of these proceedings indicates that all parties were aware or ought to have been aware at the early stages of the proceedings that the MGB would implement a process that would allow for an issue based decision given the similarity of issues and volume of wells under complaint.

2. There are no valid reasons why the findings, principles, and direction from Board Order MGB 020/07 and DL 112/07 cannot, or should not, be applied to the remaining wells.

3. The parties agree that proven production below a flow prevention device suggests that the device is not "relevant" to the depth used to calculate the assessment. Therefore, the direction from Board Order MGB 020/07 and DL 112/07 that is to be applied with respect to the remaining wells can be further refined based on the evidence currently before the MGB.

REASONS

A. Overview

In making its decision, the MGB was faced with the difficult task of balancing the procedural rights, interests and obligations of both parties, together with the requirements and authority in its enabling legislation, and the practical constraints involved with large volume of linear property complaints. This necessarily entailed a detailed review of an abundance of evidence, presentations, argument, and written summaries from the present hearing, but also a consideration of all of the evidence, proceedings, correspondence and past decisions relating to the original preliminary proceedings, the October 2006 merit hearing, and the May 18, 2007 procedural hearings.

Having determined that the process contemplated to deal with these complaints fell within its jurisdiction, the MGB focussed heavily on the rights of both parties to a process and decision that reflects a fair and reasonable result, having regard for the Act, the need for correct and equitable assessments, and the record of events throughout these proceedings. Having considered the same, the MGB is of the view that there are no factual, jurisdictional, or legal reasons why the Decisions relating to the outstanding LPAU-IDs in issue groups 1 and 2 cannot or should not be used to change the assessments for the wells in the remaining population.

The MGB believes that evidence at this hearing about certain types of flow prevention devices was relevant to the present issue and would assist the parties in identifying "relevant flow prevention devices" for the purposes of applying MGB 020/07. Based on this evidence and based on the Complainants' submission that it would not seek relief for those wells in which production could be shown below a plug or packer, the MGB has offered further clarification about the direction in the Decisions regarding the consideration of these devices in the

recalculation of the assessments for the remaining wells. This evidence does not alter the substance or findings in MGB 020/07 or DL 112/07, but rather supplements it in terms of applying the direction therein to the remaining wells.

B. Reasons - Issue 2(a)

Are the facts and issues that were germane to the MGB's decision about the 17 LPAU-IDs in Board Order MGB 020/07 and DL 112/07 substantially similar or different than those facts and issues affecting the remaining population of wells?

1. Review of Issue Groups & Examples of Mr. Thibault

Based on the Complainants' evidence and a review of the wells from each of the Category 1 (Schedule B) and Category 2 (Schedules A & D) issue groups the MGB accepts that the wells in each respective group are affected by the same common set of issues, and have the same relevant facts that drive the determination of the issues, which are determinable across all of the wells in each group. The evidence throughout these proceedings indicates that flow prevention devices such as packers and bridge plugs, along with perforations are recorded in (and therefore determinable from) the records of the EUB. These are the necessary facts that drive the determination of the issues in each issue group.

Mr. Thibault gave eight examples of wells (four from each issue group category) taken from the population of remaining wells and brought the MGB through practical examples of how the direction in the Decisions could be applied to determine depth, using the facts contained in the Geo Vista data, which the MGB has previously accepted in MGB 020/07 and again in DL 112/07 as being derived directly from EUB data. Through the use of these examples, the MGB was persuaded that the issues and necessary facts are present in the population of category 1 and 2 wells, and that the Decision is capable of application to the remaining wells.

Though the Respondent's witness, Berni Brunsch, went to some lengths to challenge the content and interpretation of the Geo Vista data, the demonstrated ability to apply MGB 020/07 to the issues in the remaining wells through the use of Mr. Thibault's examples, using EUB derived Geo Vista data was never seriously questioned. The Respondent's argument about divergent EUB databases pertained mainly to a challenge of the content or interpretation of the Geo Vista data, the reliance upon which in MGB 020/07 produced faulty findings and conclusions. However, the correctness of MGB 020/07 was not at issue in the present proceeding. As was the case in DL 112/07, this was not a review or re-hearing of MGB 020/07. The Respondent had full opportunity to present evidence to challenge the data relied upon in support of the Complainants' case at the October 2006 merit hearing. Furthermore, the Decisions order the use of the November EUB GWF, and the Respondent was able to access the relevant facts in that database to apply the Decisions to the 384 wells, based on findings about the same issues on the 17 wells at the October 2006 hearing.

The overwhelming evidence before the MGB at every hearing was that flow prevention devices such as packers and bridge plugs are recorded in (and therefore determinable from) the records of the EUB. The MGB accepts that the well depth issue is common across 2732 of the remaining category 2 wells (as identified in Schedule A of exhibit C-5), and the potential presence of flow prevention devices is common across 2732 of the properties in category 2, as these have been identified by the Complainants by referencing November 30, 2005 Geo Vista Data. Even if the November GWF discloses no flow prevention devices installed on or before October 31, 2005 below the assessed depth in any of the remaining 2,732 wells from category 2 that is not an impediment to the application of the direction in MGB 020/07, and does not lead to a result inconsistent with MGB 020/07. Reference to the MGB's direction in such a circumstance would simply result in no change to the assessed depth or assessed value.

The same finding holds for the 303 remaining Category 1 wells, and the ability to apply the Decisions to locate the Latest Deepest Perforation based on the EUB GWF.

The MGB is satisfied that the wells in each issue group are affected by the same common set of issues, and that the same relevant facts that are determinative of the issue can be ascertained by reference to the EUB records. In coming to this conclusion, the MGB was mindful of the Respondent's evidence, which did not displace the above findings. The discussion of that evidence is below.

2. Evidence of Dr. Thompson

a. *"Representative Sampling"*

The MGB found Dr. Thompson to be a perceptive and insightful witness on the matters within his knowledge and expertise. In the following testimony, the witness identifies several key themes requiring comment:

> THE CHAIRMAN: How big a sample would you need to have that?
>
> A: Again, I don't want to educate you, but it's an occupational hazard. I think you should drop the word sample from the vocabulary.
>
> THE CHAIRMAN: Example then.
>
> A: We are talking data manipulation. And currently, the Board has been given this big mess without limits and you have been asked to do something with it, and it's overwhelming. You have got to break it down, as you suggest, and I think there's some quite simple ways of doing it, break it down, as you suggest, into a method, in summary methods, a method that can be analyzed by the Board in categories, as you're suggesting.

Dr. Thompson's comments bring out a valid point – the use of the term "sample" appears to have created some uncertainty. The process followed by the MGB to deal with this complaint was always intended to deal first and foremost with the relevant *issues*. Thus the use of the term sample may be misleading since it often connotes a statistical quality. As a result, much of the Respondent's focus in the present hearing centred around statistical significance, statistical inference, testing, population definition, and the standard deviation of the wells chosen in the "sample".

However, at no point did the MGB ever intend to cast the problem as a statistical one. In fact the MGB warned that it did not consider this to be a statistical problem and cautioned the Respondent about the relevance of an expert witness in statistics at the outset of Dr. Thompson's evidence. After hearing the Respondent's objections, the MGB agreed to hear the evidence and then decide on its relevance. Although the MGB finds that the statistical information presented was not relevant to the issue at hand, Dr. Thompson's comments about when to use statistical sampling are instructive. There were other important comments from Dr. Thompson which also provide the MGB an opportunity to clarify any misconception about the procedure that has taken place.

a. *The "Leap of Faith" in MGB 020/07*

As pointed out by Dr. Thompson, there was direct evidence from only 17 out of 384 wells at the October 2006 hearing. He was critical that there was no reasoning or explanation as to how the MGB made the "leap of faith" required to make findings about the 384 wells based on evidence about 17 wells. At page 1131 of the hearing transcript he states:

> As I've described, this as a leap of faith. There is a lot of information missing in that Board order. And what the Board did with the evidence, the data that you had, and I don't see any arguments or description of how you used the record of 17 to get to 384. And if you did that, and I'm sure you did, it's not reflected in the order, so I'm left not knowing how you did that; I can only speculate.

The MGB notes that Dr. Thompson himself admitted that his review of the October 2006 proceedings and transcript, outside of his statistical analysis, was quite limited.

The MGB proceeded on the basis of hearing evidence on 10 wells from each of the original 5 issue group categories (i.e. 50 wells total). This process for proceeding was outlined at the initial stages of the October merit hearing. This was well explained at the outset of the hearing by the Complainants' counsel (page 28 of the October 2006 hearing transcript):

> And so it's our intention to go through initially the 50, and you'll see a pattern repeating itself as to the position of the appellant and the position of the respondent, which we think that it will enable the Board to give

> some direction on these calculations for not only the 50, we'll then reference and see that for the remaining 500, and hopefully we think that would be a benefit for the remainders as well.

The MGB understood that the 50 wells represented the common issues in each of the issue groups across the remaining 500 (later 384) wells, thus negating the need for a redundant line by line review of the common facts for all 500 wells that were relevant to the determination of the issues. Of the 50 wells, the MGB heard evidence on 10 of the category 1 (Drilled and Cased) and seven of the category 2 (Well Depth) wells. The remaining wells from the group of 50 were either withdrawn (i.e. the wells from category 3 and category 4 issue groups), or pertained to the category 5 (pool code 158) issue groups at issue in the hearing.

No objections were raised in opening or closing argument about such a process. Nothing further was said about this procedure until the present hearing, some 14 months after the merit hearing. In other words, proceeding by way of evidence about the 10 LPAU-ID examples from each of the issue groups to deal with the issues in the remaining 500 wells seemed to be a perfectly reasonable process for both of the parties and the MGB at the hearing, and therefore did not require discussion as an issue in MGB 020/07. It was accepted at this time that the parties would attempt to apply the principles distilled from the examination of the 17 wells to the remainder.

There was always the possibility that some of the unexamined wells in category 1 and 2 wells might have some unexpected characteristics that might complicate the application of the principles or lead to unintended results. Follow up hearings were therefore contemplated to deal with any such recalcitrant wells (i.e. the hearing for LPAU-IDs 3480996 and 2039318 was such an example). These hearings were not intended as a forum to re-argue the principles from MGB 020/07, but only to explain and explore why they may not apply to certain of the remaining wells, after an attempt at implementation had been made. The only "leap of faith" in MGB 020/07 was the assumption that the parties would make a good faith attempt to implement the MGB 020/07 principles.

b. *Not a "Mathematical Statistical Problem"*

Dr. Thompson stated in evidence to the MGB that the issue before it was not of a statistical nature. Dr. Thompson's opinion was that managing the large amounts of data was the central issue in the present proceedings, as there were no "unknowns" about the population of wells before the MGB, or about the selected wells or sample that was originally before the MGB. At page 1126 of the transcript he states:

> I, therefore, conclude that for the six reasons above, it would be improper to derive inferences from the sample and apply it to the large number because, and I will say this again because it's so important, this Board is not facing a mathematical statistical problem in applying known to unknown, which is the

> bread and butter of the statistical world; <u>you are facing a data manipulation problem.</u>

The MGB agrees with this notion. The Respondent's argument appears to be that the characteristics of the 11,000 remaining wells were not known, or could not be known until examined in detail by the MGB. Dr. Thompson's evidence appears to contradict this position, and gives the MGB additional comfort and confidence in the procedure that it adopted to resolve the remaining complaints. The MGB was never trying to derive statistical inferences about the population from the "sample". It was not hoping to draw statistical conclusions. It was making findings on the "known" issues faced by the wells before it, which it had no reason to believe would not also be applicable to the remaining "known" wells appealed on the same basis or issues.

c. *Data Manipulation using One Data Source*

With respect to the manner in which the large volume of data should be dealt with, Dr. Thompson's continued that:

> ….. you should give the parties some direction on how you think the database should be manipulated so that you can do your job efficiently. And playing around with amateur statistics is not what the Board should be contemplating and not at all what the Board needs to contemplate because you have all the knowns before you. It's data manipulation. And in this world of high-speed computers, that's what we are looking for.

This, in fact, is what the MGB has already done. The MGB made findings based on the known facts in the data presented to it about the 17 wells and directed that the same known facts about the 384 be manipulated in a manner that reflected the findings on the issues affecting all of the wells.

The MGB further agrees with Dr. Thompson's notion that only one data set should be used in giving the parties direction on how the database should be manipulated with regard to efficiently dealing with the remaining wells. In essence, this is exactly what was done with respect to the re-calculation of the 384 wells. The MGB, being aware of the requirements of s. 292 of the Act, specifically stated in the Decision that one common data source, the records of the EUB including the GWF, was to be used in recalculating the assessments for the 384 wells (based on its findings about the 17 wells from issue categories 1 and 2).

The MGB notes that, aside from the rigors of designing a new computer program, there was no impediment for the Respondent to apply direction in the Decisions about the 17 wells in recalculating the assessments for all of the 384 wells, using the records of the EUB. In only two cases (0.5% of the 384 wells) was there disagreement between the parties on the application of the Decisions, based on the recalculated assessments. In both cases, the disagreement related to

incidental issues arising out of the directions (pool code and ACC change as a result of using the November vs. October GWF in the assessment). The disagreements did not pertain to the application of the findings on the primary issue of well-depth. They were easily resolved by the MGB in the companion decision, which will provide clarity in the event that the same issues arise in the remaining population of wells.

The fact that the Respondent was able to recalculate assessments for the group of 384 wells from findings about a smaller group of 17 wells seems to suggest that the MGB has already directed a workable data-manipulation process using a single source of data. Thus, the present argument that discrepancies in the Respondent's and Complainants' data sources are an impediment to applying the Decisions to the remainder is a curious one given the direction in the Decisions about the use of one applicable data source, and the facility with which the data source can be manipulated in the computer program developed to re-calculate the assessments.

d. *Summary*

It may well be that from a statistical perspective a sample of 17 wells from the October 2006 hearing was not adequate for the purpose of making inferences and conclusions about the remaining wells. However, the MGB need not decide that issue, because the MGB is not interested in drawing statistical inferences or conclusions about the remaining wells. The MGB is trying to determine whether the data manipulation procedures that were directed in the Decisions can yield a consistent result if directed with respect to the remaining wells. This seems to be entirely consistent with the process suggested by Dr. Thompson. It is consistent with the process accepted at the merit hearing with regard to making determinations about 384 wells based on evidence from the 17 wells given to demonstrate the issues in the 384 wells. It would have been significant if there was evidence to show that there was an inconsistent result that arose through this process. No such evidence was raised through this witness.

3. Conclusion – Issue 2(a)

The facts and issues relevant to the findings and directions made in the Decisions are substantially similar across the approximately 2,700 wells identified in category 2 (Schedule A) for which the Complainants still seek relief, and across the approximately 300 drilled and cased wells in category 1 (Schedule B). The statistical evidence of the Respondent does not disprove this fact. Given the similarity of determinable facts and issues in the remaining wells, the MGB concludes that there is no practical reason why the direction in the Decisions cannot be applied.

C. Reasons - Issue 2(b)

Are there other valid reasons why the findings, principles, and direction from Board Order MGB 020/07 and DL 112/07 cannot, or should not, be applied to the remaining population of wells?

1. Overview

The Respondent's has argued that there are several reasons beyond the grounds advanced under Issue 2(a) why the Decisions cannot or should not be applied. The Complainants argue that the reasons raised by the Respondent are a veiled attempt to re-litigate the same issues or present new evidence on the same elements previously heard and decided. They further argue that the evidence of the Respondent does not provide a basis upon which to overturn the findings in the Decision, and it offers no valid reason for not implementing the Decision with respect to the remaining wells.

Having reviewed the record, the argument and evidence of the parties, the MGB feels that the reasons suggested by the Respondent are inadequate to set aside the Decisions and allow the request for a new hearing of all of the wells (including those already heard). In considering all of the circumstances in the present proceedings, the reasons and evidence are inadequate to justify vacating MGB 020/07, as the MGB is not convinced that the Decisions should not be applied to the remaining wells. The arguments and reasons on this issue are addressed below.

2. Disclosure in MGB 020/07

The Respondent has stated that a lack of disclosure of the Complainant's case prior to the October 2006 merit hearing is a valid reason why the decision should not be implemented. As a result of the poor disclosure, the Respondent argues that it did not know the case to be met, or the areas it was required to research, and as a result, it did not know what witnesses it would require to answer the Complainants' case.

DL 118/06, was issued after a preliminary hearing addressing the disclosure of the Complainants (pages 28 to 31 of Exhibit R-15). That decision directed that additional information be provided by the Complainants and found that those additional documents as augmented by some other additional material that the Complainants agreed to provide on Thursday, August 24, 2006, would provide the Respondent with a reasonable understanding of the Complainants' case with a view to preparing a reply. A further disclosure hearing was held on September 21, 2006. As a result of that hearing, the MGB issued DL 133/06 which states that the disclosure had been relatively exhaustive on the part of both parties. It appears that the disclosure issue was addressed at several different preliminary hearings, and that the MGB found that the case disclosed by the Complainants contained sufficient information for the Respondent to know the case against it.

The MGB once again reviewed the information from the Complainants that was disclosed prior to the October 2006 merit hearing. The will say statements and evidence summaries of the Complainants explain in a summary fashion the issues related to well depth, bridge plugs and packers, and the relevant point in time when treatments should be taken into account. The use of the Geo Vista well tickets was explained on the tickets themselves, and was not a complicated matter to grasp. Furthermore, the Complainants filed a 16 page brief explaining the basis of the appeal (Exhibit C-1 in MGB 020/07).

The Complainants' argument with respect to EUB records, the interpretation of s. 292, and the October 31st assessment date was clear and understandable in the brief and summary documents (C-1 and C-21 in MGB 020/07) even prior to the rebuttal of the Complainants (C-4 in MGB 020/07) on September 27, 2006, at which point it is clear that the Complainants' case was fully disclosed. In any event, the Respondent's witnesses were able to speak to this issue, and a good portion of the issue related to legislative interpretation of s. 292 and s. 4.009 of the Minister's Guidelines.

Furthermore, the Complainants' 2006 brief also discloses that the parties met to review and discuss the Complainants' data and the basis for its complaints. This fact is corroborated in the Complainants' argument at the present hearing. Given this evidence, the MGB remains of the view that the Complainants' documents set out what were plainly the relevant issues at the October 2006 merit hearing. It is to be noted that this was also the view of the MGB at the point in time which the information was received.

The evidence that was disclosed prior to the October 2006 merit hearing adequately detailed that this was an appeal that involved issues about the depth of a well, devices and treatments in wells affecting a well's production, and the interpretation of EUB records. It is correct that the MGB stated in MGB 020/07 that it would have liked further evidence with respect to EUB records and perforations, plugs, and packers within the well. However, the MGB finds that the lack of this evidence did not arise due to a lack of disclosure on the part of the Complainants. The Respondent was free to choose its witnesses to answer the above issues at the October 2006 merit hearing.

In support of its views about the Complainants' incomplete disclosure, the Respondent cited the cases found at Tabs 1, 2, 10, 13 and 14 of R-11, and the *Baker* case at Tab 10 of R-21. The MGB finds that the disclosure of the Complainants meets the tests laid down in those decisions. In particular, it meets the tests in the *Canadian Engineering and Surveys* decision, in that it was meaningful, complete, and appropriate in the circumstances of the present case.

For the reasons above, the MGB does not agree that the Respondent did not know the case it had to meet prior to the October 2006 merit hearing. It was very clear from the Complainants' submissions that flow prevention devices in the well bore would be at issue, as would be the interpretation of s. 292 relative to the relevant date for assessment purposes where the EUB records did not match the actual characteristics of the wells. Accordingly, the MGB confirms its

previous finding that disclosure of the Complainants case was adequate and this does not form a ground to challenge the application of the Decision to the remaining wells.

2. Interim or Final Decision?

The Respondent argues that the MGB never made a "final decision" in MGB 020/07. This is evident in the fact that the MGB chose not to bring the hearing that began in October 2006 to a close at the December 3 hearing. As such, there was placed before the MGB compelling new evidence that seriously questions the findings in MGB 020/07. Since no final decision was ever rendered, the MGB must now 1) receive the new evidence; 2) find that the new evidence disproves the findings in MGB 020/07; 3) vacate MGB 020/07 and decline to implement the re-calculations in Exhibit 1-R pertaining to the 384 wells; 4) decline to order recalculations of the 11,000 wells based on the direction in MGB 020/07 pertaining to the 384 wells; and 5) schedule all of the wells to a new merit hearing. Before it determined these requests, the MGB considered the argument that MGB 020/07 was not a final decision.

a. *Effect of the Decisions in MGB 020/07 and DL 112/07*

DL 112/07 resulted from a hearing scheduled at the request of the Respondent for clarification of the decision in MGB 020/07. Similar to the present hearing, it was part of the same proceedings relating to the Complainants 2006 tax year complaints about well depth. As a preliminary matter, the MGB clarified the nature of that hearing relative to the Decision in MGB 020/07 (at page 4 of DL 112/07):

> An MGB Board Order is a final determination of the issues brought before an MGB panel, subject to a re-hearing, review, or judicial review. The present hearing is convened pursuant to the Respondent's request for clarification and direction, and not as a re-hearing or review of the Decision.

Having clarified its views as to the finality of MGB 020/07, when faced with further argument at the DL 112/07 hearing about the determination of the Deepest Producing Interval (previously argued in MGB 020/07) the MGB found that it had fully decided this issue based on the evidence before it at the hearing, and that it would therefore not allow the introduction of further evidence or argument pertaining to the deepest producing interval.

The MGB considers the decision made on the issues before it in MGB 020/07 to be final. As such, it will implement the previously ordered re-calculations in Exhibit 1-R pertaining to the 384 wells in MGB 020/07. It will not schedule a new merit hearing for these wells on the basis that new evidence is now before it to disprove the Decision in MGB 020/07. As previously stated, this was not the purpose of this hearing.

In making this Decision, the MGB considered the Respondent's arguments and authorities about final decisions of tribunals, and believes the Respondent's interpretation of its own authorities to be inapplicable in the present situation. For example, a review of *Practice and Procedure Before Administrative Tribunals* at Tab A of the Respondent's Authorities (R-25) at pages 22-3 to 22-4 identifies those "interim decisions" as being of a "temporary nature" pending a final decision, and one that does not determine the matter in dispute:

> These types of Decisions, which go to matters which are ancillary to the main question before the agency, are known as interim decisions.

There was nothing temporary about the Decision in MGB 020/07, and the Decision disposed directly of the main issues before the MGB, not ancillary issues. In this view, the cases cited by the Respondent support that MGB 020/07 was a final Decision, as it determined the matters in dispute. It is distinguishable from the subject matter of the Respondent's authorities which pertain to procedural, interlocutory or ancillary decisions. All that was left after MGB 020/07 was the ancillary matter of how to properly manipulate the EUB data to re-calculate the assessments for the 384 wells based on findings about the main issues. There was no need for a further disposition on the rights of the parties relative to the main issues. The "merits of the case" as per Proprietary Industries Inc. v. Workum (Tab E of R- 26 paragraph 5 and paragraph 7), were determined at the merit hearing.

Based on the above, the MGB remains of the view that it has rendered a final decision as to the issues affecting the 384 wells, and it cannot and will not receive and consider any additional evidence raised by the Respondent at the present hearing that is specific only to the issues already decided in MGB 020/07. The Respondent had its opportunity to present its evidence at the October 2006 merit hearing. Accordingly, the MGB will not vacate the Decision in MGB 020/07, nor will it schedule the 384 wells to a new hearing.

A more difficult issue is the nature of the Decision with respect to the remaining 11,000 wells. At the time of the Decision in MGB 020/07, the remaining wells were not specifically subject to MGB 020/07, though it was specified in that decision that the possibility would be further explored. This issue is addressed below.

3. Reasonable Expectations of the Parties about the Process in DL 103/06 & MGB 020/07

The 2006 "well depth" complaint of the Complainants (as this matter has been referred to) was filed by the Complainants' agent with the MGB on March 17, 2006. It is of some importance that linear property complaints are often filed with the MGB by one agent as a single complaint group involving several different properties from several different companies, all affected by one or more issues, which are often broken down by issue groups. The complaints are all dealt with as a group throughout preliminary proceedings leading up to a merit hearing. Properties are often organized according to their common issues during the preliminary hearing process to make proceedings more efficient. Parties appearing before the MGB are familiar with this process, and

are made aware that the MGB will direct certain efficiencies in its process in an attempt to hear all complaints prior to the end of the year in which the complaint is filed.

The possibility of running an efficient merit hearing by proceeding by way of a "sample" of wells that would reflect the issues affecting the larger number of wells was first introduced in these proceedings by the Complainants on June 26, 2006 (see DL 088/06 at page 5, Tab 8 of R-15). The MGB notes in its review of the record that the Complainants introduced this procedure and at all stages supported the view that the decision as to the 500 should and could be applied to the remaining wells, whether through voluntary recommendation or mandatory MGB direction.

On July 19, 2006 a further preliminary hearing was convened to discuss this procedure. The hearing adjourned for the purpose of allowing the Complainants' to choose a proposed sample of 500 wells. It reconvened on July 24, 2006, with the Complainants introducing their proposed sample of properties and issue groups to the Respondent and the MGB. The parties discussed the sample of wells within the five issue groups identified. At that point, the Respondent was unsure whether the sample was "representative", and cautioned that it may still request a further hearing "*should additional issues or distinguishing circumstances*" emerge concerning properties outside of the sample. The MGB directed that the hearing would proceed on the sample of 500 properties identified by the Complainants.

With respect to the Respondent's concerns, the MGB reasoned that at that point in the proceedings it was unable to determine with certainty whether the properties remaining outside of the sample had "*independent characteristics that would require some separate treatment*". The MGB deferred to the merit hearing panel the determination of whether the "*remaining properties outside of the sample must be dealt with independently and whether further submissions and hearing time are required for this purpose*" (DL 103/06 at page 18 to 20 of R-15).

On August 14, 2006, the Respondent issued correspondence to the MGB indicating that it was opposed to the idea of applying a decision from the 500 properties to the remaining LPAU-IDs outside of the 500 selected. The Respondent did not identify why the properties outside the sample would require separate or independent treatment. Without any specific examples, it stated a vague concern that the 500 wells selected were not a "representative sample" but rather a "random sample". It further stated in its correspondence that it may or may not provide recalculated recommended assessments based on the MGB's ultimate decision on the merits of the issues affecting the 500 wells. If it chose not to provide recommended assessments, its position would be that a new merit hearing would be required for the remaining LPAU-IDs following the first merit hearing (page 22 to 23 of R-15).

At the October 2006 merit hearing, the position of the Respondent relative to the application of the Decision was consistent with its August 16, 2006 correspondence, as is evident from the comments of its counsel about the effect of the decision pertaining to the wells at the merit hearing (page 17 of the October 2006 transcript, Exhibit R-22):

THE CHAIRMAN: And just for our information, this 500 is 500 of 5,000?

MR. LUDWIG: I think it's about a total of 10,000 that are still out.

THE CHAIRMAN: And these 500 will be the guiding decision on the others?

MS. ZUKIWSKI: Possibly.

The MGB believes that, at the time of the hearing, this was not an issue upon which it was acceptable for the Respondent to "sit on the fence", yet have the merit hearing to proceed and give evidence and argument on all of the relevant issues. To not take a position at that point, and acquiesce but actively participate in the week long proceeding, and yet somehow retain the right to choose whether or not to be bound by the hearing result with respect to the remaining wells under complaint is an unfair use of the MGB's hearing procedures, and is not consistent with the rules of natural justice. Furthermore, it encourages a multiplicity of proceedings and would give the Respondent the ability to choose which instalment of the litigation achieved the desired result. The Respondent would be able to insulate itself from any undesirable outcome, while the Complainants would be faced with the possibility of having to prove their case more than once.

Thus, the MGB accepts that from August of 2006 up to the October 2006 merit hearing, the Respondent's position was that it may or it may not abide by the decision at the merit hearing. It further accepts that at that time, if Respondent did not wish to abide by the decision then a further merit hearing would be sought. While this was the Respondent's position, it does not detract from the express direction and intention in DL 103/06 that the merit hearing panel would retain the right to possibly determine (at a further hearing, if required) whether or not properties outside of the sample were to be dealt with independently.

Following the merit hearing, but prior to the Decision in MGB 020/07, the notion that the October 2006 proceedings might still have some bearing on the wells outside of the sample was still within the contemplation of the parties, including the Respondent. In a January 17, 2007 letter to the MGB the Respondent asked whether the MGB would apply the basis of the Complainants withdrawals during the October 2006 merit hearing to the remaining LPAU-IDs outside of the sample of wells (page 37 of R-15 [omitted]).

MGB 020/07 was issued on March 4, 2007. Given the ambiguous position of the Respondent, it was the hope of the MGB that it would not need to order the parties to abide by the Decision for the 11,000 remaining wells since both parties had indicated a partial willingness to deal with the remaining properties through mutually agreed upon re-calculated assessments submitted to the MGB in the form of recommendations. The MGB expected that the parties would do so, and if

they did not, MGB 020/07 specified that further direction would be given to resolve any difficulties encountered in applying the principles in the Decision. As indicated by the MGB at page 28 of MGB 020/07, under the heading "Decision":

> The MGB anticipates that the principles identified in this Order will also assist the parties to determine appropriate assessments for the wells not included in the sample of 500 that were directly considered in this order. However, if necessary, the parties remain free to seek further direction from the MGB in relation to these properties. If the parties have been unable to reach an agreement in relation to these properties within 30 days of the date of this order, a preliminary hearing will be held to identify the difficulties encountered by the parties and establish a process to resolve them.

On March 23, 2007, the MGB received correspondence from the Respondent indicating that it would not be able to submit the recalculated assessments directed by the MGB for the 384 wells within the 30 day deadline contained in clause 4 of MGB 020/07. The Respondent indicated in its letter that it would be able to submit the recalculated assessments by May 4, 2007, and it requested an extension until such date.

On April 23, 2007 the Respondent wrote to the MGB raising issues with respect to the direction and findings in the Decision, and requesting an opportunity to appear before the same MGB panel that issued the Decision to seek direction on these points. On April 24, 2007, the Respondent wrote to the MGB and further stated that the MGB would not have the information necessary to exercise its authority to make a change to the assessments for the 384 wells by May 4, 2007. No re-calculations were submitted to the MGB on the May 4th deadline.

Thus, with respect to dealing with the wells remaining outside of the sample, the correspondence at page 42 and 43 of R-15 indicates the Respondent's position that the process to deal with the remaining wells would be substantially clarified once the MGB received the "additional evidence" and made the "further findings" necessary to change the assessment pursuant to s. 499(1)(b) and 492(1)(c). Thus a hearing was scheduled at the request if the Respondent resulting in DL 112/07. The MGB held a hearing immediately afterward to deal with the parties position relative to the remaining wells resulting in DL 113/07. Both parties were of the view at the May 18th 2007 hearing that once a decision was rendered relative to the Respondent's request for the MGB to receive "additional evidence" and make the "further findings" that would assist with whether or not the Respondent would apply the principles in MGB 020/07 to the remaining wells.

DL 112/07 clarified some issues that the Respondent had raised about the Decision, but for the most part confirmed MGB 020/07, and did not allow the Respondent to enter new or repetitive evidence to challenge MGB 020/07. DL 113/07 was issued in conjunction with DL 112/07, and directed a procedure for dealing with the outstanding properties. It offered the parties further

opportunity to meet in the hopes that the additional guidance in DL 112/07 would allow for the remaining wells complaints to be resolved by agreed upon recommendations. DL 113/07 was therefore a follow up to the direction in MGB 020/07 in that it directed a process that would take place to deal with the 11,000 remaining wells in the event that the parties could not agree on recommendations.

The Respondent was unprepared to apply the guidance in MGB 020/07 and DL 112/07 to recalculate and recommend new assessments for the remaining wells. The MGB therefore needed to determine through a hearing whether the properties remaining outside of the sample had "*independent characteristics that would require some separate treatment*" as had been originally contemplated in DL 103/06. The present hearing was set for such a purpose; to determine if the MGB 020/07 findings could be applied to the remaining wells, or if such application was inappropriate due to, for example, "*independent characteristics", "additional issues",* or "*distinguishing circumstances"* that might be present in the remaining population. In DL 113/07, the MGB specifically asked for examples from the remaining wells of instances where the findings could not be applied. Much leeway was provided to the Respondent in its written submissions and at the present hearing to establish its case that there were reasons against applying the Decisions. However, it was never intended to be an opportunity to raise new evidence or argument, or in many cases the same evidence and argument, to challenge the Decision in MGB 020/07.

Summary of Process and Party Expectations

Upon review, any evidence raised at the present hearing to challenge the evidence upon which MGB 020/07 was based is not appropriate or relevant to the issue of whether the findings and principles in MGB 020/07 should be applied to the remaining wells. The parties were aware, or should have been aware, that the evidence that would be before the MGB on the issues pertaining to the 384 wells would potentially carry the day with respect to the remaining wells, subject to relevant reasons or evidence as to why this would be inappropriate. At best, it could be said that the Decision was final but held in abeyance with respect to the 11,000 wells pending agreement by the parties on the application of the principles in MGB 020/07, or, failing that, pending further direction from the MGB. No agreement was achieved as to the application of the principles in MGB 020/07, necessitating a decision on the procedural issue of whether it was appropriate in the circumstances to direct that MGB 020/07 be followed as the procedure to calculate the assessments for the remaining wells.

Based on the process followed since the early stages of the complaint proceedings, it would be inappropriate and unfair for the MGB to receive further evidence that goes to the merits of MGB 020/07. The parties had equal opportunity to bring their evidence to the October 2006 merit hearing. The record indicates that MGB 020/07 was always contemplated as potentially being final and binding on the issues under complaint for all 11,000 wells. It was an unfair use of the MGB's hearing process to allow the hearing to proceed while waiting to see whether the result was favourable prior to choosing whether or not to apply MGB 020/07. To allow in new

evidence on the merits of MGB 020/07 would be to sanction this tactic and encourage litigation by instalments, which is not acceptable.

4. Legitimate Expectations

The argument of Legitimate Expectations ties into the Respondent's reasonable expectations, and is related to the Respondent's jurisdictional argument. As it previously argued, the Act dictates that the MGB must hold a hearing for every well in a complaint. It argues that Part 12 of the Act, taken together with the procedures set out in its Procedure Guide and the MGB's procedures from previous hearings, gives rise to a legitimate expectation that the MGB will hold a hearing and hear evidence about each individual well before making a determination about the assessment.

The MGB has already found that it has jurisdiction to develop processes and procedures such as the one presently at issue, and that this is well within the scope and intention of the Act. Furthermore, section 7.4.3 of the Procedure Guide specifies that where an oral hearing is directed, the MGB will determine the appropriate procedures. In the past the MGB has proceeded on issue based hearings, where there were numerous properties all affected by the same issue. The Respondent was aware that this was the process being followed in the present matter, participated at length in the process, and was given ample opportunity to be heard not only within the process, but also to make representations about the process.

Accordingly, given its findings on jurisdiction and the reasonable expectations of the parties about the process at issue, the MGB does not accept the Respondent's argument with regard to legitimate expectations. As pointed out by the Complainants, the *Baker* case is clearly distinguishable on its facts. For this doctrine to apply, there must be some evidence of "promises", or "representations" made by the MGB about its processes, and then "backtracking" on those promises. Once again, the record indicates exactly the opposite. The Respondent was given ample notice of the procedure that was being followed at all stages of the complaint, participated in the process, and was given the opportunity to "put forward their evidence and views fully and have them considered by the decision maker" as per the comments in *Baker,* not only with respect to the merits of the decision, but as to the process itself. The Respondent's disagreement or ambiguity of position as to the procedure being followed does not meet the tests identified in *Baker* to receive the procedural relief associated with the doctrine of Legitimate Expectations.

5. Reconciling the Evidence from the Present Hearing with Issue 2(b)

In light of the findings above about proper disclosure, and the Respondent's reasonable and legitimate expectations, the MGB has reviewed all of the evidence before it and finds the evidence and argument listed below to be either a) repetitive of that considered in MGB 020/07; b) new evidence that was available to the Respondent at the time of the October 2006 but not raised; or c) irrelevant to the issues at this hearing. In many cases, the MGB found that evidence

was led at the present hearing to call into doubt the principles in MGB 020/07, and not to identify reasons or circumstances whereby the wells in the remaining population should receive individual or different treatment from the wells outside of the population.

a) Evidence of Berni Brunsch

At the outset of Mr. Brunsch's testimony the MGB questioned whether Mr. Brunsch's evidence was relevant to the question of whether MGB 020/07 could be applied. The MGB heard all of his evidence based on the Respondent's request to deal with its relevancy at the end of the hearing. The MGB finds the following evidence was led at the present hearing for the purpose of calling into doubt the principles in MGB 020/07, and not to identify reasons or circumstances whereby the wells in the remaining population should receive individual or different treatment from the wells outside of the population. As such it was irrelevant to the issues at hand:

Evidence relating to the completeness of Geo Vista data or the differences between Geo Vista data and EUB data.

The MGB previously found in both MGB 020/07 and DL 112/07 that Geo Vista is derived from EUB data. Any challenge to the authenticity or validity of Geo Vista should have taken place at the October merit hearing. Furthermore the MGB has directed that the recalculations are to reference the GWF and any other relevant EUB record; not Geo Vista Data.

In addition, the production of the EUB GWF for the hearing was discussed at a preliminary hearing, and the Respondent stated that it would not produce this EUB record (DL 133/06 at page 34 of Tab 8 of R-15). Thus there was no direct EUB record introduced at the October 2006 merit hearing to challenge the Geo Vista, although there were documents generated by the Respondent that were purported to represent EUB GWF data, which were then acknowledged to contain edited EUB information and non-EUB annotations. Upon review, the relevant information in the Respondent's documents mostly coincides with the Geo Vista data. Accordingly the MGB made its decision in MGB 020/07 based in part on the EUB derived Geo Vista records which was accepted as the best information before it at the time of the merit hearing.

Evidence about the analysis of Geo Vista data with regard to the 384 wells.

The MGB accepted much of Mr. Thibault's interpretation of the EUB derived data in Geo-Vista with regard to these wells. The Geo Vista data for these wells was before the MGB and the Respondent had the chance to challenge Mr. Thibault's conclusions at the October 2006 merit hearing.

Evidence about the reporting to the EUB of well information

This was irrelevant to the issue of applying MGB 020/07 and was intended to question the MGB's findings about the relevant point in time when information about a well in the EUB record should be considered for assessment purposes.

Examples of the Complainants analysis of LPAU-IDs that were later withdrawn at the October 2006 merit hearing

Neither these complaints nor their analysis were ever before the MGB in reaching its determination in MGB 020/07, and are not now before the MGB. They are thus irrelevant to the issue of applying MGB 020/07.

Examples of LPAU-IDs in the original merit hearing Geo Vista data of the Complainants but were outside of the November 30 "run" of EUB information.

Several examples were given to show that Mr. Thibault's original analysis was faulty because his data included Geo Vista records that were not updated with October 31, 2005 information until well after October 31, 2005. As pointed out by the Complainants, at the time of the hearing they did not have the guidance of the MGB's finding in MGB 020/07 that November 30th EUB or Geo Vista records are to be used to capture October 31st characteristics. This argument is flawed and not relevant to the issue of applying MGB 020/07.

b) Evidence of Bruce Ney

Much of Mr. Ney's evidence was given in the area of what should have been done by the Complainants to analyze their linear property complaints to ensure that the root cause or problem identified with regard to the original well assessment was not systemic to the Complainants analysis. This evidence is not relevant to the implementation issue currently before the MGB.

Mr. Ney's position that there are "no errors in [the Respondent's] data and process" for the assessments discounts the fact that MGB 020/07 ordered recalculated assessments for wells in which the DLA had disregarded relevant flow prevention devices and perforations in the assessment of the wells in evidence in MGB 020/07. The same issues affect many of the remaining wells under complaint. Thus, the MGB remains uncertain how Mr. Ney's position, or his criticism of the Complainants' analysis assists the MGB to determine whether there are significant reasons not to apply the findings in MGB 020/07 to the remaining wells.

Mr. Ney also criticizes the disclosure of the Complainants at the present hearing with respect to the supporting data for the calculations Schedules A, B, and D of C-5. This issue has already been dealt as a preliminary matter above. It bears repeating that the purpose of the hearing was not to analyze the correctness of Mr. Thibault's version of each of the re-calculated assessments or the information supporting the same. The purpose was to determine whether the same issues

were present in the remaining wells, whether the same circumstances are applicable to the determination of those issues and to the direction in MGB 020/07 were present in the remaining wells, and whether there were reasons why the remaining wells needed independent treatment. Furthermore, the Decisions direct the use of the EUB GWF, and thus the challenge to the validity of the Geo Vista well tickets, and his comments about different data sources achieving different results are also not relevant to the current issue.

c) Evidence of Chris Uttley

Ms. Uttley's report deals largely with issues that were previously decided in MGB 020/07. It repeats argument previously before the MGB from the October 2006 hearing. Where there is new argument, it duplicates that already raised by other witnesses at the hearing or in the other written submissions of the Respondent. It is intended mainly to call the principles in MGB 020/07 into doubt, and not to identify reasons or circumstances whereby the wells in the remaining population should receive individual or different treatment from the wells outside of the population. The evidence is either repetitive or not a relevant to the MGB in determining the issue at hand.

6. Evidence Relevant to Issue 2(b) and MGB 020/07 Implementation

Regarding Category 2 wells, MGB 020/07 directed as follows:

> In view of the above, the MGB requests the Respondent to recalculate the assessments taking into consideration the effects of devices that physically block production of the relevant product (page 19)

And, in the final decision:

> With respect to the wells affected by Issue 2, the Respondent is directed to recalculate the assessments taking into consideration that the term "deepest producing interval" must take into account relevant flow preventing devices recorded in EUB record 055. (page 28)

It is within this context that the Respondent is to take into account plugs and packers to recalculate the assessments. If the device blocks production it is relevant in identifying the deepest producing interval. To the extent that production can be shown to occur below a plug, then that particular plug is not relevant to the determination of the deepest producing interval. Accordingly, evidence specific to well production relative to the characteristics of plugs and packers and other flow prevention devices is relevant to the manner in which the Decisions will be implemented, given the direction above.

a) <u>Evidence of Berni Brunsch</u>

The MGB received and considered argument and evidence related to flow prevention devices, and weighed it accordingly. In terms of the weight given to the evidence, the MGB finds that neither Mr. Thibault nor Mr. Brunsch could be considered an expert in the mechanical operation, installation, or removal of flow prevention devices. The reasons for this finding relate to the shortcomings in the witnesses' testimony about the different types of devices, which is set out in further detail below. This was important in the MGB's consideration of the evidence, as MGB 020/07 accepted the general proposition that the plugs, cement squeezes, and packers identified in EUB record 055 are designed to restrict flow. Nothing in Mr. Brunsch's evidence suggested that relevant flow prevention devices are not recorded in record 055. However, some of his evidence was helpful in identifying which devices prevent flow.

Remedial devices, drilling through or removal of devices, and "new" flow prevention devices

The evidence before the MGB (including the requirements at the top of page 17 in Directive 59) established that if a device were removed or drilled through, the owner is required by the EUB to report this event, much the same way that the insertion of the device must be reported to the EUB. The argument that the Decisions should not be applied because the assessment may capture depth characteristics such as plugs that have been removed or drilled through but not reported to the EUB is therefore not a convincing one. This is also the case with respect to the evidence about sleeves and other new devices that can "open and close" without being removed, but could not and need not be identified in the records of the EUB. With respect to remedial devices used to effect repairs within the well but removed once the repairs were effected, the evidence was uncertain as to whether or not, or in what situations owners are required to register these devices at the EUB.

The characteristics of the well at October 31st as contained in the EUB record are to be relied on by the assessor to calculate the assessment as intended by the Act. From the evidence the MGB concludes that a) where a device is removed or drilled out that fact is documented in the EUB; b) sleeves and other "open and close" devices cannot be identified in record 055; and c) it is not certain whether or not remedial devices are ever reported by industry, whether they can be identified in the EUB records as remedial in nature, or whether they do or do not prevent flow. To this extent, none of the above facts or devices pose an impediment to identifying the relevant flow prevention in place as of October 31, 2005 as disclosed by record 055.

EUB "Code 53" cement devices

Both parties agreed that it was immaterial whether the flow prevention device was referred to as a "packing device with cement" (i.e. in the EUB GWF) or a "bridge plug with cement" (i.e. in Geo Vista); if intact the presence of such a device meant production could not occur from below the device. Accordingly the MGB finds that these relevant flow prevention devices can be taken

into account in the implementation of MGB 020/07 relative to the remaining wells, and the different terminology used for these devices in Geo Vista and the EUB GWF is irrelevant.

Packers utilized in water-injection wells

The Respondent argues that the purpose of packers in these wells is to keep the water from coming up the casing and into the reservoir. As this proposition went mostly unchallenged in cross examination, and no evidence was raised to the contrary, the MGB accepts that the purpose of these devices is most likely not to block production of product. It is noted that in the example of this situation given by Mr. Brunsch (LPAU-ID 1975285) that there is no production and the packer is installed above the perforation depths, and that the Respondent originally assessed this well at 1012 meters which is the latest deepest perforation. Where the circumstances for other water injection wells are similar, the packer need not be taken into account as a relevant flow production device when applying the Decision to determine the deepest producing interval.

EUB Code "2" devices: whipstock packers

There was argument from Mr. Brunsch that the EUB uses the same code (code 2) to identify a packing device or a whipstock packer. In his view, a packing device can be used to stop flow. The purpose of a whipstock packer is to deviate the drill string to effectively obtain a deviated or a horizontal well. Thus further analysis must follow to determine the actual device to which the code refers. It appears that such analysis can be done by having reference to the GCI top and GCI base in the PRA. The MGB understands the PRA to contain the originally reported well information that populates the EUB records. If the GCI base is reported as deeper than the reported depth of the packer, it can be assumed that production is occurring or will occur from below a code 2 device. Production identified below this type of code 2 device is consistent with the evidence that the plug is most likely a whipstock packer, and that whipstock packers do not block production.

LPAU-ID 1892108 was given as an example of such a situation. This evidence was not seriously challenged in cross-examination or rebutted by the Complainants' evidence. Thus the MGB finds that if an analysis of a code 2 reveals that the device is a whipstock packer (i.e. if further analysis of the device reveals that the GCI occurs below the packer, and had been updated at or following the time in which the device was installed), then such device is not blocking production and need not be taken into account as a relevant flow prevention device for the purpose of applying MGB 020/07 to the remaining wells.

Plugs and packers in wells with co-mingled zones

This evidence was potentially unnecessary, given that the MGB understood the Complainants to have withdrawn this category of complaint, and conceded on the record that they would not be seeking relief for commingled wells. However, the MGB wished to explore the issue further, and thus allowed Mr. Brunsch to complete his evidence on this issue, in the event that there remained

any more of this issue of wells in the remaining population. If there are, the MGB would expect that these complaints will be withdrawn based on the Complainants' submissions and Mr. Brunsch's evidence.

Evidence relating to through tubing plugs

The MGB received and considered the evidence of Mr. Brunsch that these types of flow prevention devices that receive a code 5 designation from the EUB can be produced through. The MGB is of the view that this opinion did not withstand cross-examination by Complainants' counsel. In cross, it was clarified that Mr. Brunsch "assumed" that such devices could be produced through, but he conceded that it was possible that that might not be the case. His knowledge of the purpose, use, and installation of such devices was questionable.

MGB 020/07 found that the general purpose of devices such as plugs and packers is to prevent flow or production from below the device, and that this was relevant to determining the interval at which the wells was producing. The evidence of Mr. Brusch with respect to through-tubing bridge plugs does not establish that this device can be produced through. To this extent, MGB 020/07 suggests that a code 5 through tubing device is a bridge plug, the purpose of which is to prevent flow or production from below the device. It should be taken into account as a relevant flow preventing device in the implementation of MGB 020/07 relative to the remaining wells.

Category 1 (Drilled and Cased) wells

In reviewing Mr. Brunsch's testimony and the examples at Tab 8 of his report, the MGB is of the view that there is no difficulty in applying the relevant findings in MGB 020/07 to the remaining drilled and cased wells. The main issue or difficulty raised in Tab 8 relates to "submission dates" of the perforation information to the EUB, the actual date of the perforation being beyond October 31, or the appropriate month's version of the EUB GWF to determine the perforation. These matters have all been addressed in MGB 020/07. There are not reasons to support not applying MGB 020/07 to the remaining wells. There is no impediment with respect to applying the direction in MGB 020/07 to find the latest deepest perforation as of October 31, 2005 to find the latest deepest perforation in the GWF of the EUB.

b) Evidence of Bruce Ney

The data analysis undertaken by Mr. Ney at Tab J of R-16, and the pattern analysis at tab J of R-16 seem to follow the data manipulation directions in MGB 020/07. This evidence together with his testimony at the hearing about the Technical Process used by the DLA to recalculate the 384 wells is relevant and supports the view that MGB 020/07 can be applied to the remaining wells. The MGB accepts that this process, modified in accordance with the clarification in this decision and the companion decision, when implemented for the remaining wells, will achieve assessments that are consistent with the principles in the Decisions.

c) Summary of Evidence Considered on Issue 2(b)

Of the evidence that the MGB accepted on issue 2(b) only two details were ultimately relevant to the application of MGB 020/07 to the remaining wells. With respect to plugs or packers in non-producing wells identified by the EUB as water injection wells, the MGB accepts that the purpose of these devices is most likely not to block production of product, and as such they need not be taken into account as a relevant flow production device when applying the Decision to determine the deepest producing interval. Secondly, if the analysis of a code 2 device reveals that production at the GCI is occurring below the plug, it need not be taken into account in determining the deepest producing interval, as on balance, the evidence would indicate that this is a whipstock packer which can be produced through.

7. Equity

The argument was raised that applying the findings in MGB 020/07 to any of the remaining wells would create inequity. This view is not well explained in the Respondent's written argument. The MGB agrees that equity is achieved in a regulated assessment regime through the consistent and correct application of the regulations governing assessment. However, the MGB found in MGB 020/07 that the Minister's Guidelines and the Act were not being applied correctly, based on the interpretation of s. 292 of the Act and the determination of the "deepest producing interval" in s. 4.009 of the Guidelines. It is not clear to the MGB how equity is at all an issue in determining the question of whether the findings in MGB 020/07 can be applied to the remaining wells. This argument seems more to relate to the Respondent's view that MGB 020/07 is incorrect, and that the resulting recalculation direction from the Decisions gives rise to incorrect and therefore inequitable assessments.

In Ms. Uttley's report some reference is made to the fact that the direction in the Decisions to use the November 30 edition of the GWF disk could also change other specifications and characteristics derived in the EUB records for assessment purposes, including schedule D depreciation and the ACC for a well in some cases. She states that the linear assessor cannot be selective of some characteristics (i.e. well depth) and not others (i.e. ACC); to do so would be incorrect and inequitable. The MGB agrees with this comment. All of the legislatively relevant October 31st specifications and characteristics of wells (found, in some instances, in the records of the EUB at a later date) including well depth, ACC, and depreciation characteristics, must be considered to arrive at a correct assessment. The MGB did not direct otherwise, and the companion decision to this Decision letter further addresses this issue with respect to ACC and Pool Code 158 wells.

Accordingly, the MGB does not accept that inequity would result from the application of MGB 020/07 to the remaining wells. This argument pertains solely to the merits of MGB 020/07, and the cases cited by the Respondent in Tabs 5 through 9 of its Authorities (R-11) are irrelevant and not on point with the issue presently before the MGB.

8. Section 292 of the Act

The interpretation of s. 292 of the Act has been raised by the Respondent in its written argument. MGB 020/07 fully decided this issue. As such it is not necessary to pursue the issue here.

However, the MGB wishes to set out its views with respect to the Respondent's contrast between the terms "characteristics and *physical condition*" (as of December 31) in s. 289(2) of the Act used to drive the assessment of property other than linear property, and the terms "characteristics and *specifications*" of Linear Property (as of October 31st) in s. 292(2)(b)(i) of the Act used to drive the assessment of linear property. The Respondent highlights the difference in the last two words to suggest that MGB 020/07 has confused the "market value" standard with the regulated valuation standard for linear property in coming to its decision in MGB 020/07 that the assessment should reflect the *actual* specifications and characteristics of linear property on October 31st, 2005, and not the EUB record itself on October 31st 2005.

With respect, the MGB disagrees that it has in any way confused the two assessment standards. The MGB believes that the difference in wording highlighted by the Respondent does not detract from the original interpretation of s.292 in MGB 020/07.

The difference in wording in these two sections of the Act is simply consistent with the type of property being assessed. Certain *specifications* (i.e. the diameter of pipe, the type of steel used etc.) actually exist and are determinable for a well or pipeline on October 31st and are relevant to its regulated assessment value. The *physical condition* of, for example, a residential property on December 31st is also determinable, and relevant to its assessment. In other words, the different terminology likely has been chosen by the legislators to be consistent with the type of property (i.e. it would be unclear what to look for if the Act specified that residential property be assessed according to its "specifications"). The MGB does not believe that the legislators excluded the words "*physical characteristics*" from section 292 to suggest an intention that physical elements associated with linear property are not relevant to its assessment as argued by the Respondent, since physical elements in fact drive the EUB records, which in turn drive the assessment.

9. October GWF vs. November GWF

This argument has been dealt with above with respect to Mr. Brunsch's evidence. The evidence and argument is directed at challenging the findings in MGB 020/07 with regard to determining the October 31st characteristics of a well. It is not relevant to the issues presently being heard. Accordingly, the MGB does not accept such evidence or argument and will not change its findings about the use of the November GWF.

10. Onus

The Respondent believes that the Complainants are the party seeking to advance their complaints which includes advancing the position that the Decisions should be applied to the remaining wells. In its view, this entails the Complainants establishing proof that:

a. the Board has jurisdiction to consider a prior decision as a binding precedent;
b. the Board's enabling legislation allows the resolution of complaints in this manner;
c. the sample chosen by the Complainants is free from errors;
d. the Complainants' analysis of the sample and the population is accurate
e. the well ticket extracts they rely upon are a faithful reflection of the EUB's General Well File;
f. the well ticket extracts they rely upon are as of a specific point in time; and
g. the findings in MGB 020/07 and DL 112/07 are factually accurate for all of the unscheduled well complaints.

The Respondent argues that the Complainants have inappropriately tried to shift the onus of proof as to the above items to the Respondent.

It is not necessary to comment on the issue of who had the onus of "proving" jurisdiction. In its view, it is the MGB that directed this process, and jurisdiction is always a relevant issue for the MGB to consider and decide with respect to its procedures, regardless of which party benefits by a finding that the MGB has jurisdiction on a matter or procedure.

With respect to the remaining points, the Complainants proved on balance that the issues and relevant facts in MGB 020/07 were the same for the wells in the respective issue groups. In the absence of some other compelling reason not to apply the direction in MGB 020/07 to the remaining wells, the principles are to be applied to the balance of the wells.

11. Respondent's Argument of MGB Prejudgment

The Respondent informed the MGB that it had serious concerns that the MGB has pre-determined the result of the present hearing. The MGB was warned by the Respondent several times during the hearing, in the Respondent's written materials, and in previous correspondence that focusing the issue on whether or not the Decision of the MGB in 020/07 could be applied to the remaining wells was indicative of pre-judgment. At times in the proceeding, it was apparent that the Respondent disagreed with the MGB about what were the pertinent issues at the hearing. For example, at pages 967 to 968 of the transcript of the present hearing, Respondent's counsel states:

> The respondent is concerned, and we have mentioned this already, that the Board's communication, decisions and the way that this hearing is shaping, and the way that the issues have been framed by the Board in this

> hearing may indicate that the Board has pre-determined how it's going to proceed with the unscheduled 2006 tax year complaints…..

The MGB believes that trying to focus parties on the relevant issues is one of its functions in running fair and efficient proceedings. Setting out the relevant issues and having the parties comment on the issues that they feel are relevant, seems a far cry from pre-determining the answers to those issues.

The prejudgment argument was never satisfactorily explained by the Respondent, and no authorities were provided to the MGB that would support the view that a tribunal's attempts to focus the issues at a hearing can be construed as pre-judgment. It is worthy to note the following comments from Respondent's counsel about prejudgment, immediately following the comments above:

> ….and we are obliged to provide the Board with notice that in future proceedings, we may argue that this [is] so. The reason we believe we must provide you with that notice is so that you can have regard for that when you make your determination and your decision from this hearing.

The allegation of pre-determination is not one that the MGB takes lightly, and the MGB remained sensitive to this concern during the hearing. It gave the Respondent much leeway with respect to the evidence on the issues which the Respondent felt were relevant. In response to the Respondent's concerns, it kept an open mind to the fact that evidence might have been raised that would later be relevant, even if the evidence at the time did not appear to be directly on point with the relevant issues before it. As an illustration, although skeptical about the relevance of statistics to the present issue, the MGB entertained evidence from the Respondent's statistical expert, Dr. Thompson, and heard much cross-examination by the Respondent of Mr. Thibault who acknowledged he was not an expert in statistical analysis. Near the end of Dr. Thompson's evidence, he concluded that the MGB was not faced with a statistical issue at this hearing.

10. Miscellaneous Matters

a. *Schedule A, B, and D of Exhibit C-5*

The Complainants have stated that it is open to the MGB to implement the recalculated assessments found in their schedules, on the basis that it is the best evidence before the MGB. The Respondent rejects this notion on the basis that the calculations are incorrect for failing to account for changes in characteristics other than well depth (i.e. ACC) as a result of using November 30th information.

The MGB did not review these re-calculations for their accuracy, nor will it implement the new assessments as it accepts the Respondent's evidence that the calculations in some cases do not achieve an accurate assessment based on the instruction in MGB 020/07. As stated in the preliminary matters, the MGB did not need to consider whether each calculation in the Schedules

of C-6 was correct, nor did it consider the source data in support of the Complainants' data. This was not the purpose of this hearing. As a result, the MGB in this Decision will not implement the calculations submitted by the Complainants.

b. *Implementation for all wells on the basis of the Latest Deepest Perforation*

The MGB understands the alternative argument of the Complainants that in the event that the deepest producing interval cannot decisively be identified then the default depth is the latest deepest perforation. However to order implementation on this basis would be inconsistent with the direction in MGB 020/07. The purpose of the hearing is to address the possibility of applying the findings in MGB 020/07 with regard to the effect of relevant flow prevention devices on the deepest producing interval. The MGB has found that there is no reason not to apply its direction from MGB 020/07; thus the Complainants' alternative request to implement MGB 020/07 on the basis of the deepest producing interval need not be considered.

SUMMARY

In DL 103/06 the MGB decided to proceed using what had been termed a "sample" of properties from each issue group identified as an efficient way to proceed. The complaints in this case were broken down into five issue groups pertaining to several different properties, three of which proceeded to the merit hearing for determination. As pointed out by the Complainants, the process of using a selection of properties that exemplify the common facts and issues in a larger group is a process that has been followed in the past by the MGB for large volume complaints, with the results from the hearing of a few being applied to the many. When used in the appropriate circumstances, a determination on the issues for some yields the same results for the others, given the uniformity of issues and relevant facts from which the issues are derived. The Respondent has been party to such proceedings in the past, and has been part of the same process by which the present complaints have proceeded. Given the Respondent's sometimes ambiguous, sometimes oppositional position as to this process, it is difficult to accept the argument that by proceeding in this manner, the MGB has defied any reasonable or legitimate expectations claimed by the Respondent.

The MGB has jurisdiction to proceed with the above process. There is uniformity in the issues and relevant facts across wells in each of the remaining issue groups. The evidence of the Respondent did not disprove this fact. The argument and evidence entered through the Respondent's witnesses did not satisfy the MGB that a valid reason existed not to apply the findings in MGB 020/07 and DL 112/07.

The evidence that was accepted by the MGB with regard to flow prevention devices has led it to conclude that "relevant flow prevention devices" can be identified by reference to EUB records, and thus further guidance has been provided as to which of these devices should not to be taken into account in applying MGB 020/07, having reference to EUB records (i.e. where the device can be definitively identified as a whipstock packer, or if the device occurs in a water injection

well). However, the MGB pauses to observe that this guidance could have been deduced by the parties themselves based on the principle expressed in MGB 020/07 that an interval that is below a pipe in a well that has been plugged cannot be the "deepest producing" interval.

Given the further clarification of what plugs and packers are to be considered as "relevant flow prevention devices" in determining the depth (n*) in the Minister's Guidelines, there is no impediment to applying MGB 020/07 with respect to the remaining category 2 wells in Schedule A of C-6. The assessment must take into account relevant flow preventing devices in determining the deepest producing interval for the category 2 wells. It appears that where a relevant device is identified in the November EUB GWF, the relevant depth to be considered in calculating the assessment is that of the latest deepest perforation above the device. With respect to the category 1 Drilled and Cased wells in Schedule B of C-6, there is no impediment to applying the direction in MGB 020/07 to find the latest deepest perforation as of October 31, 2005 in the EUB GWF.

DECISION

1. With respect to all remaining Category 1 (Drilled and Cased) wells, the DLA is ordered to follow the direction in MGB 020/07 (as supplemented by this Decision Letter and DL 112/07) to determine the Latest Deepest Perforation as of October 31, 2005, in changing the assessments for these wells based on this information.

2. With respect to all remaining Category 2 (Well Depth) wells, the DLA is ordered to follow the direction in MGB 020/07 (as supplemented by this Decision Letter and DL 112/07) to change the assessments for these wells taking into account all relevant flow prevention devices in determining the depth (n*) in the Minister's Guidelines. The following are not relevant flow prevention devices and need not be taken into account:

   a. Packers and Plugs utilized in water-injection wells; and
   b. Whipstock packers (where investigation confirms that the EUB code 2 device is a whipstock packer because production is reported at an updated GCI that is below the packer)

All other flow prevention devices are to be taken into account in recalculating the assessments.

3. In changing the assessments for the remaining wells, the DLA is to take into account the direction about LPAU-IDs 3480996 and 2039318 in the companion decision to this Decision Letter.

4. The Complainants must provide the Respondent and the MGB a list of Category 1 and 2 wells for which relief is still sought, together with withdrawals of the wells for which relief is not sought. The assessments for the category 5 wells will be confirmed in a in a future Board Order.

5. The DLA must submit the recalculated assessments for all of the wells in Category 1 and 2 wells to the MGB and the Complainants on or before May 5, 2008.

6. At the time that the re-calculated assessments are submitted, the Respondent may provide its comments about the remaining LPAU-IDs from category 1 and 2 for which the Complainants still seeks relief. The comments must be restricted to whether a given LPAU-ID cannot be the subject of this order due to it having been withdrawn, duplicated, or the subject of a previously recommended assessment.

7. The MGB will confirm the changed assessments in a future Board Order.

It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta, this 31st day in March, 2008

MUNICIPAL GOVERNMENT BOARD

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(SGD) D. Thomas, Presiding Officer

cc:
- S. White and C. Uttley, Assessment Services Branch
- J. Thibault, JT Consulting
- M. Pryor, Encana Corporation & Encana Oil and Gas Co. Ltd.
- D. Bielecki, Talisman Energy
- D. Zimmer, BP Canada Energy Company
- A. Johnson, Canadian Natural Resources Ltd.
- K. Nelson, Resources Canada (Hunter) Limited, Burlington Resources Canada Ltd., C/O ConocoPhillips Canada Resources

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB AT THE DECEMBER 3, 2007 HEARING:

NO.		ITEM
Respondent	Complainants	
R1(a)		Letter from RMRF dated September 20, 2007
R1(b)		Spreadsheet of Recalculated Assessments
	C2	Disagreements on Implementation Recalculations (Joe Thibault)
R3(a)		Letter from RMRF dated September 7, 2007
R3(b)		Technical Process for DL 112/07 Compliance
R4		Letter from RMRF dated November 27, 2007
	C5	Report of Joe Thibault
	C6	Legal Brief of Wilson Laycraft
	C7	Implementation examples of J.T. Consulting
	C8	Will Say statement of Joe Thibault
	C9	Rebuttal Report of Joe Thibault
R10		Respondent's Argument dated November 27, 2007
R11		Respondent's Volume of Authorities I (dated November 27, 2007)
R12		Respondent's Volume of Legislation dated November 27, 2007
R13		Respondent's Volume of EUB Directives and Legislation
R14		Respondent's Volume of Documents
R15		Respondent's Volume of Correspondence
R16		Report of Bruce Ney
R17		Report of Berni Brunsch
R18		Report of Chris Uttley
R19		Report of Dr. Edward Thompson
R20		Respondent's Argument dated September 7, 2007
R21		Respondent's Volume of Authorities II (dated September 7, 2007)

APPENDIX "A" (cont)

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB AT THE DECEMBER 3, 2007 HEARING:

NO.		ITEM
R22(a)		Transcripts from MGB 020/07 – Volumes I to III
R22(b)		Transcripts from MGB 020/07 – Volumes IV to VI
R23		Flip Charts – Joe Thibault
R24		Flip Charts – Berni Brunsch
R25		Respondent’s Evidence Summary & Argument
R26		Respondents Volume of Authorities III dated January 8, 2008
	C26	Complainants’ Evidence Summary and Argument
R27		Respondent’s Rebuttal to Evidence Summary & Argument
	C28	Complainants’ Rebuttal to Evidence Summary & Argument
R29		Respondent’s Reply Re: Jurisdictional Issues

APPENDIX "B"

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB AT THE MAY 18, 2007 HEARNG:

NO.		ITEM
Respondent	Complainants	
R1(a)		Letter to MGB from Brownlee LLP dated March 23, 2007
R1(b)		Email to Brownlee LLP from MGB dated April 5, 2007
R1(c)		Letter to MGB from Wilson Laycraft LLP dated April 9, 2007
R1(d)		Letter to MGB from RMRF LLP dated April 23, 2007
R1(e)		Letter to RMRF LLP from MGB dated April 23, 2007
R1(f)		Letter to MGB from RMRF LLP dated April 24, 2007
R1(g)		Letter to MGB from Wilson Laycraft LLP dated April 25, 2007
R1(h)		Letter to RMRF LLP and Wilson Laycraft LLP from MGB dated April 23, 2007 (sent April 30, 2007)

R1(i)		Letter to MGB from Wilson Laycraft LLP dated May 1, 2007

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB AT THE MAY 18, 2007 HEARNG (cont'd):

NO.		ITEM
Complainants	Respondent	
R1(j)		Letter to RMRF LLP and Wilson Laycraft LLP from MGB dated May 3, 2007
R1(k)		Letter to MGB from RMRF LLP dated May 14, 2007
R1(l)		Email to RMRF LLP from MGB dated May 15, 2007
R1(m)		Email to MGB from RMRF LLP dated May 16, 2007

APPENDIX "C"

DOCUMENTS RECEIVED BY THE MGB AT THE OCTOBER 2, 2006 MERIT HEARING:

NO.		ITEM
Complainants	Respondent	
C1		Brief of the Appellants
C2(a)		Well Depth Issue – Category 1 – Drilled and Cased Wells
C2(b)		Well Depth Issue – Category 2 – Incorrect Assessed Depth
C2(e)		Well Classification Issue – Category 5 – Pool Code 0158
C2(f)		Wells with Producing Formations
C2(g)		Examples of Recognizing Bridge Plugs without cement
C3		Willsay Statements
C4		Rebuttal Submission of the Appellants (Complainants)
C5		Letter from Wilson Laycraft to MGB and Brownlee dated September 26, 2006
	R6	Respondent's Argument
	R7	Volume of Authorities
	R8	Volume of Documents
	R9	Volume of Legislation and EUB Directives
	R10	Report of Bruce Ney
	R11	Report of Dan Driscoll
	R12	Volume of Documents – Tabs 17.1 to 17.5
	R13	Volume of Documents – Tab 18 – Scenarios 1, 3, 4, and 5
	R14	Volume of Documents – Tab 18 – Scenario 2
	R15	Volume of Documents – Tab 19

C16		CD prepared by JT Consulting
	R17	Spreadsheet showing LPAU-IDs withdrawn or remaining under complaint

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB AT THE OCTOBER 2, 2006 MERIT HEARING: (cont'd)

NO.		**ITEM**
Complainants	Respondent	
	R17(b)	Revised spreadsheet showing LPAU-IDs withdrawn or remaining under complaint
C18		Withdrawal form dated October 2, 2006
	R19	Bundle of S-4 History printouts with Hand-written LPAUID numbers
C20		Document extracting definitions from EUB Directives
C21		Document entitled "Linear Appeals by Category"
	R22	Evidence summary of Chris Uttley Jointly Agreed to by the Complainants and the Respondent
	R23	Recommendations to the MGB
	R24(a-b)	Flip Charts - Mr. Driscoll
	R25	Flip Chart – Mr. Ney
C26(a-k)		Flip Charts – Mr. Thibault
C27		Alberta Energy and Utilities Board Data Dissemination – General Query and cover letter Wilson Laycraft to the MGB dated November 27, 2006
	R28	Letter from Brownlee to MGB dated November 6, 2006