

**NOTICE OF DECISION**

**NO. DL 112/07**

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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 Edmonton on Friday May 18, 2007, respecting the decision in Board Order MGB 020/07 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.

**In Attendance:**

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

Respondent: C. Zukiwski, Reynolds Mirth Richards and Farmer LLP  
C. Uttley, Assessment Services Branch, Alberta Municipal Affairs and Housing  
J. Fortin, Assessment Services Branch, Alberta Municipal Affairs and Housing  
J. Forrest, Assessment Services Branch, Alberta Municipal Affairs and Housing  
B. Ney, Consultant, Assessment Services Branch, Alberta Municipal Affairs and Housing

Complainants: G. Ludwig, Wilson Laycraft LLP  
B. Dell, Wilson Laycraft LLP  
J. Thibault, JT Consulting  
M. Merrick, JT Consulting  
D. Johnson, JT Consulting  
K. Minter, Canadian Natural Resources Ltd.  
B. Cormier, Canadian Natural Resources Ltd.  
K. Nelson, ConocoPhillips  
L. Zilinski, Encana Corporation  
S. Reeder, Encana Corporation  
P. Virdee, Encana Corporation

MGB Staff: S. Sexton, Case Manager  
L. Adams, Linear Complaints Administrator  
A. Kos, Law Student

**Designated Linear Assessor for the Province of Alberta as represented by Reynolds Mirth Richards and Farmer LLP – Respondent v. Apache Canada Ltd. et al as represented by Wilson Laycraft LLP – Complainants**

**OVERVIEW**

The present hearing was convened on May 18, 2007 pursuant to the Respondent's written request to the MGB to provide further direction or clarification of Board Order MGB 020/07 (the Decision). The broad issue dealt with in the Decision was the proper determination of well-depth, a variable used in the Respondent's calculation of its assessment for a given well. The Decision also dealt with the role of the different records of the Alberta Energy and Utilities Board (EUB) relative to the Respondent's calculation of an assessment for a well, and the interpretation of the 2005 Alberta Linear Property Assessment Minister's Guidelines (Minister's Guidelines) and Section 292(2)(b) of the *Municipal Government Act* (Act), which both indicate that linear property assessments, including well assessments, must reflect the specifications and characteristics of property as of October 31<sup>st</sup> of a given assessment year, as reflected in the records of the Alberta Energy and Utilities Board (EUB). In the Decision, the MGB ordered the Respondent to change the assessments for the wells under complaint in accordance with the findings and principles it made on these issues. The Respondent has not done so on the basis that it requires further clarification. The main issue now before the MGB is whether it is necessary to provide supplemental findings, directions, or clarification relating to the Decision so that the Respondent can implement the MGB's order.

The Respondent has three grounds for requesting further findings, clarification or direction:

- 1) That there was no clear finding in the Decision about the EUB's filing deadline for owners to update the EUB records to properly reflect the characteristics and specifications of a well on October 31<sup>st</sup>, 2005. Such a finding is necessary because the Respondent was ordered to change the assessment where EUB records indicated that the changes were filed within the EUB's filing deadline.
- 2) That there was no evidence before the MGB of the specific date on which a change in the physical characteristics of a well was filed with the EUB. Without proof of a filing date, it cannot be determined if the changes were filed in compliance with the EUB's filing deadline.

- 3) There is a discrepancy in the information reported to the EUB by the Complainants about the deepest producing interval for each of the LPAU-ID numbers where the determination of depth is an issue.

The Complainants argue that the Decision was a final determination of the issues surrounding the properties under complaint. They maintain that the MGB considered the relevant evidence before it at the merit hearing, made adequate findings, and gave directions to the Respondent that were sufficiently clear to follow. It states that there is no need to now “re-open” the Decision based on the Respondent’s arguments.

**BACKGROUND**

**Board Order MGB 020/07 - The Decision**

The Decision was issued on March 5, 2007, following the conclusion of a merit hearing which took place from Monday, October 2, 2006 to Friday, October 6, 2006 and Monday, October 16, 2006 (the merit hearing). The merit hearing was convened to hear the issues pertaining to a sample of 500 wells out of approximately 13,000 wells in total which were the subject Complainants’ 2006 (tax year) Linear Property complaints. A comprehensive overview of the issues argued at the merit hearing can be referenced in the Decision.

In the Decision, the Respondent was ordered to change the assessment amounts for the properties under complaint. The Respondent was further directed to provide supporting calculations for the changed assessment to the MGB for approval within 30 days of the Decision date. The relevant excerpts of the directions at issue in the present hearing are found at pages 27 and 28 of the Decision, and are reproduced below:

- 1. With respect to all of the subject wells, the Respondent is directed to recalculate the assessments to reflect changes made to wells made on or before October 31, 2005, where subsequent EUB records show that these were reported to the EUB in compliance with the EUB’s reporting deadline.”
- 2. 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.”  
.....
- 4. All revised assessment amounts and supporting calculations must be submitted to the MGB for approval within 30 days of the date of this order. Should the Respondent encounter difficulty meeting this deadline, it must notify the MGB as soon as possible to identify the difficulty.”

**Post-Decision History**

A list of all written submissions and correspondence between the parties and the MGB from the date the Decision was issued up to the date of the present hearing is attached to this Decision Letter as Exhibit R1 of Appendix “A”. The relevant submissions and correspondence from the parties was reviewed by the MGB prior to making its decision, and are summarized in chronological order in Appendix “C” herein.

**PRELIMINARY & PROCEDURAL MATTERS****Hearing Procedure to Deal with the Respondent’s Request for Clarification**

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. The procedure to request a review or re-hearing was not followed by the Respondent. However, the MGB feels that the duty of fairness extends to hearing a party’s request for clarification of a decision, including argument on whether certain directions or findings in a decision are lacking, or are insufficiently clear. This duty is particularly applicable in the present case where the party requesting a review is under a positive duty to act in accordance with the MGB’s order.

The MGB has agreed to hear the Respondent’s position on what clarification or further direction is required, and if appropriate, to provide further direction or clarification if it appears that compliance with the Decision is impossible or impracticable due to a lack of clarity or proper direction by the MGB. Given this procedure, unless it is specifically indicated herein, any findings or directions arising out of the present hearing are intended to clarify and supplement the Decision, not replace it.

**LPAU-IDs at this Hearing**

The Decision involved complaints about a sample of 500 well LPAU-IDs. The sample was taken from a larger population of approximately 13,000 well LPAU-IDs under complaint. In the Decision, the MGB anticipated that the principles identified would assist the parties to determine appropriate assessments for the wells not included in the sample of 500 that were directly considered. Strictly speaking, the Decision was made regarding the 500 sample LPAU-IDs. The Respondent’s position is that the Decision is tied only to the sample and cannot be applied to the entire population. Accordingly, until the issue of the representative nature of the sample is dealt with in further detail, the present hearing pertains to the same 500 sample LPAU-IDs before the MGB at the merit hearing. The MGB re-iterates its comments that it anticipates that the Decision

(supplemented by the present Decision Letter) in relation to this sample will identify principles that can be applied to the entire population to come to appropriate assessments for the wells not directly included in the Decision.

**Evidence at this Hearing**

For reasons of consistency, the exhibits from the merit hearing are marked herein as they were in the Decision and can be referenced in Appendix “B”. New information and submissions received by the MGB were not added to this list, but were marked separately, in the regular numerical fashion in Appendix “A”.

Throughout the hearing, and in its written submissions, the Respondent made numerous references to exhibits from the merit hearing which it identified as “C17” and “C17(b)”. It was clear to the MGB that the Respondent was referring the MGB to the two spreadsheets showing LPAU-IDs withdrawn or remaining under complaint, which were marked as exhibits “R17” and “R17(b)” in the Decision. Accordingly, the MGB refers to these documents as R17 and R17(b) in this Decision Letter, notwithstanding the reference to these documents at the present hearing as C17 and C17(b).

**ISSUES**

- 1) Reporting Requirements of the EUB
  - a) Did the MGB make a decision or finding in the Decision with regard to the EUB’s deadline to report changes in the status or physical characteristics of wells?
  - b) If yes, what deadline did the MGB direct that owners should comply with in reporting changes in the status or physical characteristics of wells to the EUB in support of an amended assessment?
  - c) Was argument or evidence presented to the MGB during the merit hearing in support of drawing a distinction between different EUB reporting requirements for different types of events or changes occurring to wells?
    - (i) If not, should the MGB now consider new argument or additional evidence pertaining to the reporting requirements of the EUB, and if appropriate, make additional findings, or give further direction based on further argument and evidence?
  - d) Is further clarification about the reporting requirements of the EUB required so that the Respondent can carry out the MGB’s order to recalculate the assessments?

2) Proof of Reporting Dates for Changes to Wells

- a) Did the evidence before the MGB during the merit hearing indicate the specific dates that changes to wells were reported to the EUB?
- b) Is proof of specific EUB reporting dates necessary in order for the Respondent to carry out the MGB's order to change the assessments?
- c) Should the MGB direct the submission of new evidence and argument from the parties pertaining to the date on which well status changes and drilling and completion events for each LPAU-ID were reported to the EUB?
- d) Is further clarification about proof of EUB reporting dates required so that the Respondent can carry out the MGB's order to recalculate the assessments?

3) Evidence of Deepest Producing Interval

- a) Did the MGB make a finding pertaining to the deepest producing interval?
- b) Should the MGB now allow the introduction of further evidence and argument from the parties pertaining to the deepest producing interval?
- c) Is further clarification about the deepest producing interval required so that the Respondent can carry out the MGB's order to recalculate the assessments?

**ISSUE 1: Reporting Requirements of the EUB****Respondent's Position**

The Respondent argues that this issue centers on the direction given to it in the first bullet point on page 27 and 28 of the Decision to recalculate the assessments to reflect changes made to wells before October 31<sup>st</sup>, 2005, where subsequent EUB records show that these changes were reported to the EUB in compliance with the EUB's reporting deadline. The Respondent questions whether there was any decision by the MGB with regard to what the EUB's reporting requirement was, and states that there is no indication in that bullet point. The Respondent further argues that the Decision refers to a 30 day reporting period based on the testimony of the Complainants' witness, Mr. Thibault, regarding Directive 059. It argues that the Decision fails to mention Guide 007 and the 14 day EUB reporting requirements for well status changes. The Respondent states that the existence of a 14 day EUB reporting deadline is not contradicted in the different EUB Directives or the testimony of the witness at the merit hearing.

In support of its argument the Respondent referred the MGB to Exhibit R-9 from the merit hearing, at tab 6, which is a document entitled EUB Directive 007: Production Accounting Handbook – September 2002 Draft. It referred the MGB to table 4 on page 45 of that Directive, which shows the different types of well statuses derived from the Well Records System (WRS). It then referred the MGB back to paragraph 1.2 of page 4 of the document, under the heading Well Status Change Requirements, which states that an operator of a well must notify the EUB through the Petroleum Registry of a change in well status within 14 days of the change to well status, or prior to the submission of volumetric data. The Respondent also referred the MGB to the references in the Directive to Gross Completion Intervals, which are found at pages 45 to 49 of the document.

The Respondent then referred the MGB to Exhibit R-9 from the merit hearing, at tab 6, which is a document entitled EUB Directive 059: Well Drilling and Completion Data Filing Requirements May 2001 (Revised to June 2004). It referred to page 2 of that document, which specifies that 30 days from the conclusion of the operation or prior to a well status change required for volumetric submission, an operator must submit the electronic drilling and/or completion data to the EUB. The Respondent stated that Directive 059 requires that when an electronic submission is accepted by the EUB, a cover sheet of the submitted change is available for printing, which is the “hard copy” of the electronic submission. Within seven days of acceptance of the electronic data, the owner must send the EUB the hard copy version of the change. At pages 37 to 39, the Guide defines specific completion events to which the 30 day reporting deadline applies (i.e. cement plugs, bridge plugs, plug backs, cements, and caps).

The Respondent referred the MGB to the transcript of the evidence from Complainants’ witness Joe Thibault on cross examination at the merit hearing, at lines 19 to 22 on page 302. In that excerpt, the Respondent states Mr. Thibault makes reference to a 14 day EUB reporting requirement for well status. It states that the MGB failed to consider this evidence in the Decision.

The Respondent reiterated its position that the MGB has not made a finding in the Decision as to the EUB’s reporting requirements. It stated that from the evidence before the MGB, there are examples where the Complainants are well outside any reporting deadline of the EUB. It requested that the MGB now provide the necessary clarification on this issue based on the evidence reviewed at the present hearing.

### **Complainants’ Position**

The Complainants prefaced their position on this issue by stating their disappointment with the way in which the Respondent waited for the MGB’s 30 day deadline to recalculate the assessments to elapse before requesting an extension, and then at the end of that extended deadline for compliance, expressing that it is somehow impossible to carry out the re-calculation in the face of relatively minor requirements for clarification. The Complainants indicated their further disappointment with the fact that the Respondent has brought an application for

clarification before the MGB, instead of sitting down with the Complainants to discuss any issues that they felt were unclear in the Decision and coming back to the MGB with a joint recommendation based on their discussions. In the past, this type of meeting between the parties to discuss the direction of the MGB was not uncommon, but on this occasion, the Respondent has decided not to do so.

The Complainants argue that they do not interpret the decision in the same manner that the Respondent does. The Decision refers mainly to a 30 day EUB reporting timeline, but also refers to giving well owners a “reasonable time” to file with the EUB. In some cases, particularly where total vertical depth is being reported to the EUB, it takes several months for the EUB records to capture the actual depth, because the EUB manually reviews the survey information submitted by an owner before updating the record. In which case, argues the Complainants, the reporting date may fall well outside the ambit of either the 14 or 30 day EUB deadline, making these deadlines not reasonably applicable to the reporting of this event.

In the Complainants’ view, the important factor to keep in mind about the EUB’s reporting timelines was that those timelines are driven by the fact that an assessment must be based on the physical status of the property on October 31, and not on the paper records of the EUB as at October 31, and that this finding was clear in the Decision. The Complainants reiterated that the evidence before the MGB at the merit hearing disclosed that this information is contained in the November and December EUB disks. Therefore, there was ample evidence before the MGB upon which it could make the order to change the assessments. Accordingly, the Complainants believe that the Respondent has all of the information it needs to know the physical status of the property as at October 31, 2005, and should not require any further clarification on this issue.

The Complainants concede that there is evidence of a 14 day reporting period, but that reporting date only applies to well status changes and EUB record 075. The 14 day deadline is not relevant to perforations treatments, drilling operations, or other completion events filed on record 055. They maintain that of all of the wells under appeal only a few are affected by the issue of the EUB’s reporting deadline. In the majority of cases, the evidence before the MGB showed that the work was done prior to October 31, and reported to the EUB in a reasonable amount of time.

### **Findings**

1. Board Order MGB 020/07 found that there is a 30-day EUB deadline for reporting changes in wells to the records of the EUB (page 11, paragraph 2).
2. Board Order MGB 020/07 found that a fair and appropriate cut-off date for the Respondent to obtain live records for the purposes of well assessment would be a short time following the EUB’s own reporting deadline for events occurring on October 31 (page 9, second bullet)



3. Board Order MGB 020/07 found that the EUB deadline for reporting changes to a well provides owners with a fair and reasonable reporting period and that it is appropriate to apply a similar reporting period from October 31 for owners to report changes to a well in support of an amended assessment (page 14, paragraph 4).
4. Board Order MGB 020/07 directed that EUB records reflecting changes to wells reported in compliance with the EUB deadline (where the deadline occurs within a reasonable time after Oct 31<sup>st</sup>) are records that support an amended assessment (page 27, paragraph 1).
5. No meaningful argument was made on the evidence before the MGB at the merit hearing in support of applying an alternative EUB reporting deadline other than 30 days for owners to report changes to wells in support of an amended assessment.
6. The findings of the MGB pertaining to the EUB's reporting requirements are sufficiently clear so as to allow the Respondent to apply those findings in the recalculation of the subject assessments.

**Reasons****Issue 1: Does the Decision Make a Finding on the EUB's Reporting Deadline?*****Overview***

At pages 27 and 28 of the Decision, the Respondent is ordered to:

“...recalculate the assessments to reflect changes made to wells made on or before October 31, 2005, where subsequent EUB records show that these were reported to the EUB in compliance with the EUB's reporting deadline.”

The MGB understands the crux of the Respondent's argument to be that the direction to recalculate the assessments cannot be followed because the Respondent cannot determine what constitutes “...compliance with the EUB's reporting deadline”. It cannot determine compliance because, in its view, the MGB failed to make a finding on the EUB's reporting deadline. It further argues that it is unclear what EUB reporting deadline the MGB was referring to in the above order, given that there was “no discrepancy in the evidence” of different reporting deadlines for drilling and completion events (Guide 059 – 30 day reporting deadline) and well status changes (Guide 007 – 14 day reporting deadline). It further suggests that the MGB now must make a finding of the proper EUB deadlines that apply to the proper types of well reporting events, consistent with the two different Guides of the EUB.

For reasons that follow, the MGB will not make any further findings on the applicable reporting deadlines, as it is of the view that it previously found that a 30 day EUB reporting deadline from

October 31<sup>st</sup> should be given to owners to update the records of the EUB in support of amended assessments.

***What did the MGB find as the applicable EUB deadline?***

In assessing whether it made a determination of what was an appropriate reporting period relative to the EUB's own reporting requirements, the MGB referred to the following excerpts from the Decision:

- “The evidence before the MGB (including EUB Directive 059, page 2, and the evidence of Mr. Thibault) suggests the EUB deadline does not elapse until 30 days after October 31. Accepting records up to and including this deadline has the advantage of eliminating the need for double reporting to both the EUB and the Respondent.” (Page 11, paragraph 2 [Underlined emphasis added]).
- “However, the current panel believes that requests made in compliance with the EUB's deadline that show changes made before October 31 (where that deadline occurs within a reasonable time after October 31) are EUB records that support an amended assessment. In other words, a fair and equitable application of the procedures in the Regulations and Minister's Guidelines requires the DLA to prepare or amend assessments to reflect changes reported in compliance with the current EUB deadlines.” (Page 27, paragraph 1[Underlined emphasis added]).
- “As indicated in the previous section of this order, the MGB agrees that the interests of fairness and accuracy argue in favour of allowing a grace period of at least as long as the time permitted by the EUB for recording relevant changes to the well. There is no dispute that no such grace period was allowed. Accordingly, the MGB is of the view that the assessments of these wells should be recalculated by the Assessor by using data that allows for this consideration.” (Page 13, paragraph 4 [Underlined emphasis added]).

In light of the above excerpts, the order directing the Respondent to recalculate the assessments to reflect changes made to wells made on or before October 31, 2005, clearly contemplated that “compliance with the EUB's reporting deadline” means changes filed with the EUB within 30 days from October 31, 2005.

The MGB also believes that at one point, the Respondent must have understood the MGB's findings on this issue, given the Respondent's letter to the MGB dated March 23, 2007 (Exhibit R1(a)). In particular the MGB notes the following statements in that letter:

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“The Respondent anticipates that it will be able to submit all revised assessment amounts and supporting calculations to the MGB within 60 days from the date of the Board Order: MGB 020/07 (that is by May 4<sup>th</sup>, 2007), and kindly request an extension of the MGB deadline to this date”

As is indicated in the letter, the Decision was issued on March 5, 2007. The Respondent had approximately 3 weeks to review and digest the Decision before it sent the letter on March 23, 2007. No question was raised by the Respondent at that time as to how the changes ordered to the assessments were to be implemented, or what EUB deadline was being referred to.

***Other EUB reporting deadlines – EUB Guide 007***

The Respondent has stated that there is “no discrepancy in the evidence” that there exists different reporting deadlines for drilling and completion events (30 day reporting deadline as per EUB Guide 059) and well status changes (14 day reporting deadline as per EUB Guide 007). It further suggests that the MGB failed to make a finding about the applicability of the EUB Guide 007 – 14 day deadline, in spite of the evidence before it.

To support its argument, the Respondent directed the MGB to the direct examination of the Complainants’ witness, Joe Thibault, during the merit hearing, where there was reference to a form that must be filed with EUB production data within 14 days of a change in well status. This is found at page 301 to 303 of the transcript of the merit hearing, and is reproduced below:

THE WITNESS: This S-4 document is described in one of our pieces of evidence. It's contained in the 2006 appeal, Darryl, in the acts and guidelines folder, in the EUB data file, in the AEUB data folder, in the AEUB directives. Directive 007-2001.

MR. LUDWIG: Does showing you these S-4s change your analysis in any way?

THE WITNESS: No, it doesn't.

MR. GILMOUR: You said something this morning, I thought, that these are discretionary or something now?

THE WITNESS: Yes. The Board no longer will accept an S-4 effective -- that changed effective October 1st, 2002, this would be new evidence; interim directive ID 2002 01 issued by the EUB on May 14, 2002.

THE CHAIRMAN: Thank you.

THE WITNESS: So basically this document, which was issued on May of 2001, is no longer in effect because of this interim directive. So when we look at the S-4 change of well status, we go to page 45 of 241. There is the introduction to how to complete an S-4 change of well status statement, May 2001. Page 2 is the form that was used prior to October 1st, 2002 by industry in recording the change of well status statement.

Next one, Darryl? This form must be filed with the EUB production data - production and well data services group within 14 days of a change in well status. Here is the depth -- when we look at this S-4 document presented by the DLA yesterday, it has an interval recorded on this S-4 history. It indicates the interval 392848.0. That field would have been indicated here as a gross interval. So the information that is contained on this record would be filled out right here, from, to, gross completion interval. [Underlined emphasis added]

The MGB notes that this reference to the 14 day reporting deadline occurred incidental to the direct examination of the Complainants' witness about the applicability of an S-4 form for changing well status with the EUB. No reference was made to the 14 day deadline during the Respondent's argument. Nor were questions directed to this deadline during the Respondent's examination of its witnesses. To the MGB's knowledge, during the merit hearing there was no other reference of a 14 day deadline other than the above excerpt of testimony. Further, it appears from the transcript that the witness was referencing this deadline from EUB Directive 007-2001. From the evidence at the merit hearing, Directive 007-2001 was no longer in force as of October 1, 2002. No evidence was led at any point in the merit hearing as to whether this deadline was still applicable in EUB Guide 007.

During cross examination of Mr. Thibault, the Respondent was given the opportunity to investigate the 14 day deadline and EUB Guide 007. Upon a review of the transcript from the merit hearing, it is clear that the Respondent did not do so. However, the Respondent did cross-examine Mr. Thibault somewhat exhaustively on the 30 day reporting period and EUB Guide 059, throughout pages 315 to 320, and pages 335 to 336 of the transcript. Furthermore, in argument, no reference was made by the Respondent to the EUB Guide 007 - 14 day deadline. In contrast, the Respondent did refer in argument to the EUB Guide 059 - 30 day deadline, at page 791 of the merit hearing transcript, and suggested that the minimum EUB reporting requirement was 30 days:

MS. ZUKIWSKI: On cross-examination, we took Mr. Thibault to the EUB reporting requirements where the Respondent submits the EUB is telling the companies it wants them to do better than their minimum reporting requirements. Wants them to do better than 30 days. Exceed those expectations. Get their data in right away. And if they want it to be used for assessment, well, then it is, as

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Mr. Driscoll said over and over in his testimony, incumbent upon them.  
[Underlined emphasis added]

The Respondents own witness, Dan Driscoll, when cross-examined about the EUB's production reporting requirements, testified as follows about other EUB reporting requirements, at page 536 of the transcript:

THE WITNESS: We're getting the October -- end of October production records, the EUB disseminates it on December 8th.

MR. LUDWIG: Disseminates it to you by disk; is that right?

THE WITNESS: To anyone that subscribes to it by disk. So not just to us, to everybody.

MR. LUDWIG: Do you have any explanation for if it's due on the 18th, the delay between the 18th, that the data would be in, and the 8th when you get the CD? Have you had any chance to investigate what would be happening in that time frame at the EUB?

THE WITNESS: No, it's similar to -- it's similar to any other characteristic and specification that's reported by the linear property owner. They have time frames with respect to the characteristics and specifications we talked about yesterday, they have a 30-day time frame to provide it. With production, they have an 18-day time frame to provide it. But if you want it to be reflected in the assessment, it's incumbent on the linear property owner to report it to the EUB, so it shows up on the record on October 31st.

Accordingly, the MGB does not accept the Respondent's argument that there was "no discrepancy" in the evidence, directives, and argument, of a 14 day EUB reporting deadline for well status changes. In fact, it appears that the one reference in the evidence at the merit hearing to a 14 day deadline is contradicted by the testimony of the various witnesses, the various EUB Guides and Directives, and the argument of counsel for the Respondent. Furthermore, the Respondent made no effort at the hearing to clarify the difference between the two reporting deadlines, given that it focussed the majority of its questioning and evidence about EUB deadlines around the EUB Guide 059 - 30 day reporting requirement.

In summary, the MGB finds that no meaningful evidence or argument was presented at the merit hearing about a 14 day EUB reporting requirement that would have allowed the MGB to have properly considered that there existed alternate EUB reporting requirements other than the 30 day reporting period contained in Guide 059. It is the MGB's function to consider the evidence presented to it through the hearing process; not to monitor the evidence submitted, or to raise argument on an issue on behalf of the party failing to do so. The MGB believes it to be a proper

principle in law that if applicant fails to present evidence at a hearing, a board or tribunal is under no obligation to re-open or rehear a case based on additional evidence that a party wishes to introduce after the hearing has ended. The MGB believes that this holds true even where there is a discretionary power for a board or tribunal to re-hear or review its decisions. The MGB will not exercise its discretion to re-hear or review this matter in light of this new evidence or argument. Evidence of a 14 day deadline was available at the merit hearing but was not introduced through questioning or argument at that time. Its introduction at this point appears to be in support of a different and even contrary position than that which was espoused by the Respondent at the merit hearing. It should not be allowed in light of this fact. Furthermore, the MGB reiterates that this was not a re-hearing or a review of the Decision. The purpose of the present hearing was to determine if further clarity or direction was needed – not to consider new argument on a point of evidence.

As a final comment, even had the Respondent introduced argument at the merit hearing in support of the Guide 007 - 14 day deadline, the MGB is currently of the view that this deadline is not as fair a reporting period as the 30 day deadline for reporting completion events. The MGB found in the Decision that a reporting period of at least 30 days from October 31<sup>st</sup> was a fair time to report changes occurring to wells. It remains of this view notwithstanding that there is evidence of an alternative EUB reporting deadline. The rationale underlying the MGB's use of a 30 day deadline is based on what is a fair compromise to both parties. It is fair for the well owner to have time to report data that it is entitled to rely on in support of an assessment reflective of the characteristics and specification of the linear property as of October 31<sup>st</sup>. It is fair that the Respondent should have some finality in its annual assessment process, and therefore an owner should not have an unlimited time to update the physical characteristics of the property in the EUB records.

The 30 day reporting period was not chosen by the MGB based on the rationale that the reporting requirements of the EUB must be strictly adhered to for assessment purposes. It was persuasive to the MGB that a reporting period of 30 days already existed as an EUB reporting period for completion events, and the MGB used this as a point of reference to determine an appropriate reporting period applicable to owners wanting to support their claim for an amended assessment. It was not intended that in all cases, the EUB reporting deadlines particular to every different EUB related event must be applied to owners seeking to report those events to the EUB in support of an amended assessment. For example, if an owner fails to send in the hard copy of the electronic EUB update within 7 days from the date of the electronic update as required by the EUB, it should be of no consequence to the Respondent's assessment process, because the electronic records of the EUB are accurately updated and available to the Respondent to allow it to calculate an accurate assessment.

***Is further clarification of Issue 1 required?***

The MGB has already stated that its finding of a 30 day reporting period for reporting well changes was clear. It does not believe it to be necessary to provide any further clarification beyond what has already been given. However, from the Respondents argument and written submissions it appears that a few technical details of the order have been misconstrued, and that the Respondent could benefit from some clarification on these points.

At pages 27 and 28 of the Decision, the order states:

“...the Respondent is directed to recalculate the assessments to reflect changes made to wells made on or before October 31, 2005, where subsequent EUB records show that these were reported to the EUB in compliance with the EUB’s reporting deadline.”

The MGB believes that the above order falls within the jurisdictional ambit of s. 499(1)(b) & 499(3)(a). A change to the assessments has been ordered, and the terms of that order are (a) that the physical recalculations are to be performed by the Respondent and (b) submitted within 30 days to the MGB.

The first point of clarification is that a change to the assessments has already been ordered, contrary to the Respondent’s position that a change cannot be ordered, due to insufficient information or evidence before the MGB. The MGB was satisfied that it had sufficient information before it at the merit hearing, which is why it made the order to change the assessments.

The second detail in need of clarification is that, contrary to the Respondent’s view, it is the Respondent, and not the MGB who is to perform the physical re-calculation of the subject assessments that the MGB has ordered. The MGB also observes, and re-iterates, that the assessments are to be recalculated by the Respondent to reflect the physical status of the property on October 31, 2005, where EUB records subsequent to October 31<sup>st</sup> show that the physical status was reported in compliance with the EUB deadlines. As stated previously, the MGB found that the applicable EUB deadline for updating well information in the EUB records in support of an amended assessment is *at least* 30 days from October 31<sup>st</sup>, 2005. In the MGB’s view, the records of the EUB on December 1<sup>st</sup> should contain changes that were submitted within the 30 day deadline from October 31<sup>st</sup>.

***Issue 1 - Summary***

The MGB is satisfied that it made findings that well owners have a 30 day deadline from October 31<sup>st</sup> to report changes to wells to the EUB in support of an amended assessment. This deadline was extrapolated from the EUB deadline found in Guide 059. The MGB also reviewed

the merit hearing transcript at length and is convinced that this is the only finding that it could have made based on the evidence and argument before it. The MGB will not further review its findings on the applicable EUB deadline in light of any additional contradictory evidence now sought to be introduced by the Respondent. The MGB will not now entertain the Respondent's argument that there is evidence of alternative EUB reporting deadlines contained in EUB Guide 007, particularly in light of the fact that this argument was available but not addressed at the merit hearing. Accordingly, the MGB will not make any further findings on applicable EUB reporting deadlines.

As previously stated in the Decision, the Respondent must recalculate the subject assessments to reflect changes made to wells made on or before October 31, 2005, where subsequent EUB records show that these were reported to the EUB in compliance with the EUB's 30 day reporting deadline. The 30 day deadline or reporting period, for the purposes of calculating an assessment, applies in all cases from October 31<sup>st</sup>, 2005.

## **ISSUE II: Proof of Reporting Dates for Changes to Wells**

### **Respondent's Position**

The Respondent argues that, similar to Issue 1, this issue also centers on the direction given to the Respondent in the first bullet point on page 27 and 28 of the Decision. It argues that the evidence before the MGB does not indicate the date on which a well status change or a drilling and completion event was reported to the EUB. Without proof of the submission date of the change to the EUB, it cannot be determined if the Complainants have complied with the EUB's reporting requirements.

In support of this argument, the Respondent referred the MGB once again to the evidence of Mr. Thibault in cross-examination. His testimony indicates that neither the Complainants' Geo Vista records nor the Respondents records show the date that an event or change was reported to the MGB. His evidence was that he did not consult with the Complainant companies about the dates on which these events were reported to the EUB. The Respondent also referred to the testimony of its witness Dan Driscoll, which corroborated Mr. Thibault's testimony that there was no evidence capable of establishing the dates on which events are reported to the EUB.

The Respondent also cross-referenced the evidence in Exhibits R-17(b), R-15, R-13, and C-2 and in order to provide three examples of instances where LPAU-IDs under complaint were filed outside of any of the EUB's reporting deadlines.

One example, LPAU-ID 2056286, was not reported in the EUB records as of December, 2005, was not withdrawn from the complaint, and there was no Geo Vista record of this well in any of the Complainants' exhibits.



In its second example, LPAU-ID 2751948, the Respondent indicated to the MGB that the Complainants' requested depth of 559.5 in R-17(b) was already accurately recorded by the Respondent's exhibit R-13. The Respondent also pointed out that for this particular well, the completion event in question occurred on February 27, 2005, but that it was not reported on the October 2005 EUB disk, and is therefore not in compliance with the EUB's reporting deadline. Accordingly the Respondent believes that this requested depth should not be considered for the purposes of an amended assessment, unless the Complainants can show that they did report it to the EUB within 30 days of February 27, 2005. It believes that this is the proper interpretation of the MGB's order. The Respondent offered three more similar examples of non-compliance for LPAU-IDs 2752567, 2797447 and 3126362.

In the Respondent's opinion, the issue of EUB deadlines and reporting dates is not a one size fits all solution that can be reconciled by reference only to the EUB's November or December disks. Reference must be had to the actual reporting dates in order to implement the MGB's order to change the assessment, and this information is not present on any EUB record. It summarized its position by stating that there is no proof of EUB filing dates for the wells under complaint and that the onus is on the Complainants to provide proof of the same to the MGB as required by Directive 059 in order to prove that the assessment should be changed. Not only is there no proof of compliance, but based on the evidence provided to the MGB, there are examples where the Complainants are well outside the reporting deadlines of the EUB.

### **Complainants' Position**

The Complainants indicated that their interpretation of the MGB's findings on this issue differs starkly from the Respondent. They do not believe that the MGB intended by its order to act as a policeman for the EUB and enforce reporting requirements on behalf of the EUB by penalizing well owners through disallowing changes to an assessment because of non-compliance with the EUB's deadlines. They do not believe it was the MGB's intention to require a paper trail of submission dates from them in the face of what is contained in the EUB's records. Nor do they believe that this type of post-hoc exercise is possible at this point in time. The Complainants further argue that requiring this type of reporting evidence in the face of EUB records establishing the physical condition of the property on October 31 goes beyond what the Act intends. Physical status should always prevail. In this respect, the Complainants maintain that the MGB was setting out benchmarks on reporting compliance in the Decision, and it did not intend to open up each individual well under complaint to determine if the EUB 30 day reporting requirement was met before allowing a change to an assessment.

The Complainants interpret the Decision as directing the Respondent to use the December production disks of EUB data in the calculation of its assessments. The Complainants suggest that, practically speaking, there are only a handful of wells that were not evident in the November or December EUB disks. They believe that there is no evidence of non-compliance with the EUB's reporting date, and that all of the evidence necessary for the MGB to order an adjustment to the assessments was therefore present at the merit hearing, in the form of the Geo

Vista data showing the physical status of the property as of October 31, 2005. On the basis of this evidence, Mr. Thibault has been able to recalculate the assessments. The Complainants asked the MGB to confirm their requested assessments supported by the recalculations by Mr. Thibault.

**Findings**

1. There was no evidence at the merit hearing of the specific date that a change to a well was reported by a well owner and filed with the EUB.
2. Board Order MGB 020/07 found that the Respondent receives monthly electronic disks from the EUB that contain monthly updates of the EUB records (page 11, paragraph 3).
3. The December version of the monthly EUB disks contains information about the physical characteristics of wells up to and including the end of October.
4. The records of the EUB (or their Geo Vista derivatives) contain information about the date that an event or physical change in the status of a well took place; it can be determined from the EUB records (or their Geo Vista derivatives) whether a physical change or event affecting the status of a well occurred before or after October 31<sup>st</sup>.
5. The MGB did not require evidence proving each specific EUB reporting date for each well under complaint for it to order a change to be made by the Respondent to the subject assessments.
6. The Respondent does not require proof of each specific EUB reporting date for each well under complaint before it can implement the MGB's order to change the subject assessments; all of the necessary information is contained in the Records of the EUB.

**Reasons**

Issue 2: Was Proof of Reporting Dates Required to Order a Change to the Subject Assessments?

***Overview***

The Respondent believes that it cannot implement the MGB's order, regardless of a finding on an appropriate EUB reporting period. It believes that knowing the actual dates that owners have submitted changes to wells to the EUB is necessary before it can determine if an owner is in compliance with the permitted EUB reporting period. The Decision states that if an owner reports outside of the EUB reporting period, then it is not entitled to a changed assessment, says the Respondent. It argues that since there was no proof of the actual dates that the well owners submitted their change notifications to the EUB, it cannot carry out the order to change the subject assessments.

Upon a review of the transcript, the MGB notes that this point was already raised by the Respondent at the merit hearing. Generally, the MGB would not consider re-argument on an issue already decided, however, the added twist to the argument is that the lack of proof EUB submission dates has allegedly prevented the Respondent from complying with the MGB's order. The question the MGB must now address is, in the absence of the exact dates for which changes to wells were reported or filed with the EUB, does the Respondent have sufficient information to comply with the MGB's order to change the assessments?

The MGB accepts that there was no proof of submission dates at the merit hearing, however, it believes that the availability of up to date EUB records gives the Respondent the information it needs to change the assessments as ordered. The Respondent can use the relevant EUB records on December 1st, 2005 (i.e. at least 30 days after October 31) in its recalculation of the assessments. The MGB finds that the recalculations can and should be carried out having regard only to the EUB records, without the need for exact reporting dates that a change was submitted to the EUB. The MGB also believes that the Respondent's refusal to change the assessments as ordered is a result of its erroneous interpretation of the way in which the EUB reporting period was to be applied in the recalculation of the assessments. The reasons for these conclusions are set out below.

*Is further clarification of Issue 2 required?*

It is clear from the written and oral submissions of the Respondent that it has erroneously interpreted the way in which the EUB reporting period was to be applied in the recalculation of the assessments. The MGB wishes to clarify the misunderstanding at this point in its reasons regarding issue 2 because the erroneous interpretation is what gives rise to the Respondent's argument that proof of submission dates are necessary before it can change the assessments. The MGB believes that if it's finding on the 30 day EUB reporting period is properly understood and applied, the Respondent's argument under issue 2 cannot be maintained. Dealing with the faulty interpretation at this point in the decision will provide a context to the MGB's later reasons for finding that proof of submission dates to the EUB are not required for the Respondent to carry out the changes ordered to the assessments.

As stated previously in this decision, it was the intention of the MGB that the 30 day reporting period be applied in all cases from October 31<sup>st</sup>. Though the MGB believes that this was fairly clear in the Decision, it was apparent from the following transcript excerpt from the present hearing that the Respondent has misconstrued the way in which this reporting period was to be applied to the subject properties in the recalculation of the assessments. At page 18 the Respondent explains its view:

“All right. We are on page 4 of 745 of Exhibit R-13. You count as requesting a depth of 559.5. If you look in the middle of the chart, you see perforation, a date of 2005, 02, 27, so that would be February 27th, 2005.

You see 559.5. You see the comment, Not on October CD. If this February 27th of 2005, it is 10 months before October 31st, 2005. So reporting requirements to the EUB 30 -- this is a completion event, Directive 59, 30 days would suggest it was there by the end of March, 2005. So on the surface of this, there's no compliance with the EUB reporting requirements. This depth should not be considered. If the Complainants can show that they did report it in March or within 30 days of February 27, 2005, then they have proved that this depth should be changed in accordance with your decision. But on the surface of this with what you have right now, it suggests based on the evidence R-15, Tab 19, that that February 27th, 2005 event reported after October 2005, so not in compliance.” [Underlined emphasis added]

By this, the Respondent's interpretation of the order is that if there is a physical change to the property at any time during the assessment year it must be reported on or before the EUB's own deadline date or the owner forever loses the right to have its assessment changed. If this rationale were followed, an owner who fails to report in March an event that occurred in February, but reports the change to the EUB sometime later in the assessment year, for example in June, loses their right to have the assessment changed to reflect the physical status of the well as of October 31<sup>st</sup>, despite the fact that the physical status of the well is properly captured in the EUB records at the time that the assessment is produced. In other words, the Respondent believes that it would not have to change the assessment to reflect the information contained in the EUB records, because the physical change or event was reported late. This interpretation is completely inconsistent with the requirements of the Act and the Minister's Guidelines that assessments be based on the records of the EUB. The application of this interpretation also yields several undesirable results.

The first result would be the creation of inequitable assessments contrary to s. 293 of the Act. Similar linear properties that would normally be assessed using the same yardstick (the records of the EUB of the physical characteristics of linear property as at October 31st) would be assessed differently if the EUB filing deadline for one of the properties was missed, because one of the properties would not be assessed based on its October 31<sup>st</sup> physical characteristics.

The second undesirable result would be the deterioration of the *prima facie* validity and reliability of the EUB records, contrary to s. 292 (2)(b)(i). The EUB record of the characteristics and specifications of the linear property would be questioned in every instance where a change to a property was reported in an assessment year, because the assessor would then have to go beyond the EUB record to determine if changes in the characteristics and specifications were filed within the EUB deadline, before it could rely on the record for the purposes of calculating its assessment. In effect, it would give documentary proof of filing dates more significance than the EUB record itself, because the proof of submission date in the document could be used to ignore the EUB record, overriding its significance in the assessment procedure. These

undesirable results are clearly contrary to the intent of the Act, and accordingly, the MGB finds the Respondent's interpretation of this portion of the Decision to be unreasonable.

The Respondent's belief that it is unable to calculate assessments without EUB submission dates stems from an unreasonable view that the Decision directs that a change to a well must be reported within the EUB's deadline or the owner forever loses its right to have the assessment changed, notwithstanding what the EUB records indicate as the physical status of the well on October 31<sup>st</sup>. Only in light of this interpretation could the Respondent argue that it requires proof of EUB reporting dates. The Respondent would then be correct that it would need to know the reporting dates for any changes that occurred before October 31<sup>st</sup> to determine if they were reported within 30 days from the time the change or event occurred. However, the MGB has already ruled that the 30 day reporting period applies in all cases from October 31<sup>st</sup>. Ostensibly, if the change was reported within 30 days from October 31<sup>st</sup>, it would appear on the records of the EUB on December 1<sup>st</sup>. As a result, and for the reasons that follow, the MGB believes that the Respondent has the ability to implement the MGB's order to change the assessment as directed in the Decision, notwithstanding that there is no proof of the submission dates of changes to wells reported to the EUB.

***What did the evidence at the merit hearing disclose about the records of the EUB?***

In the Background portion of the Decision, at page 4, the MGB states:

“The MGB understands that data filed with the EUB (at least those portions of it that are relevant to well assessments) is public, and is also available through third party service providers. Geo Vista, referred to later in this order, is such a third party service provider.”

No evidence was introduced at the merit hearing or at the present hearing that would lead the MGB to conclude that the EUB records relevant to well assessments are not available to the Respondent, or that Geo Vista records are not derived from the records of the EUB.

The MGB is also aware that the Respondent receives a monthly EUB general well file disk, and monthly production records from the EUB, as noted at page 11 of the Decision, paragraph 3:

“With respect to administrative convenience, the MGB notes the evidence of Mr. Driscoll that the DLA uses production records that arrive from the EUB well over a month after the general well file data. This circumstance together with the availability of monthly EUB general well file disks makes it difficult to accept that waiting for a later general well file disk will create insurmountable administrative difficulties for the Respondent.”

Upon review of the merit hearing transcript, the MGB also notes that EUB well data indicating the characteristics of a well existing on October 31<sup>st</sup> is present on the December version of the

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monthly EUB disks. This appears to be the case for both the EUB production disks and the EUB General Well File disk. At page 642, the production disk is discussed by the Respondent's witness, Bruce Ney:

MS. ZUKIWSKI: What is the as-of date for the CD received in middle of November?

MR. NEY It would say September. We did analyze that information. We did look for information as of October. It is not present on that CD. The October information of the year is not available until you receive, in December, the CD which is marked as being the October information, just as it is on tab number 7. [Underlined emphasis added]

And at page 648, the effective dates of the general well file disks are discussed:

MR. NEY The analysis that I conducted in conjunction with Mr. Driscoll focused on the -- let me count them here, the fifth and sixth columns from the right. In other words, the material that Mr. Driscoll has already testified on. We did examine whether this information was on the October CD, on the November or December CD, or later. The results are what you see here that has already been covered off by Mr. Driscoll this morning. There are many instances where it did appear -- it did not appear on the October CD. It did appear on either the November or December, but for whatever reason, there are quite a few instances where it was not on the general well file that the EUB deemed to be the October release of the information. [Underlined emphasis added]

As referred to in Mr. Ney's testimony, the Respondent's witness, Dan Driscoll previously gave evidence about this topic. The MGB found the foregoing passage from Mr. Driscoll at page 606 of the merit hearing transcript particularly persuasive in coming to its decision about the need for proof of submission dates:

MR. THOMAS: If the records take it in December as to the characteristics of that well effective at the end of October, would they not comply with Section 410 [of the Minister's Guidelines] as being characteristics of that well as at the end of October and as recorded in the records of the EUB effective on that date? They may have been registered after that date, but it's still effectively showing the status and condition of the well as of October 31st?

THE WITNESS: With respect to that with a lot of the date [sic] elements that are entered into the EUB, there is no date stamp. So as I said, we don't know when it's entered. Although it says in the record that

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this was effective that date, I guess what you do is, you know, it becomes a never-ending problem, when is your as-if date. Because as you can see in our tab 19, some went on the October CD, some went on the November and December CD, so they were in the January and February CD that showed the characteristics and specifications as of October 31st, so --....

MR. THOMAS: But the EUB has a 30-day filing deadline, I think. Is that not the case?

THE WITNESS: That's what we read out of here, is 30 days after completion.

MR. THOMAS: What I'm wondering is if you pulled the records after the 30 days after October, would that not more likely show the actual characteristics that existed on the 31st?

THE WITNESS: It would also show some of the characteristics that didn't exist as of that date, so you would have -- say you would have -- it says -- I think it says in the Act, this is how I interpret it, is that it says the characteristics and specifications on the record of the Board as of October 31st. So if you went to the December 1st CD, you are going to get some December editions [sic] that may reflect October 31st, but you are also going to get some November editions [sic] that shouldn't be included until the next year's assessment. And because nothing is date stamped, it just has -- [Underlined emphasis added]

The MGB believes the word “date” was misspelled in the transcript and should read “data”, and that the word “editions” was also misspelled and should read “additions”.

The underlined excerpts support the MGB’s finding that the physical status of a well as of October 31<sup>st</sup> is ascertainable from the December 1<sup>st</sup> CD from the EUB. The latter excerpt introduces the main concern of the Respondent as to why an EUB “date stamp” is required before it can determine if the EUB record was updated prior to the EUB reporting deadline. The Respondent’s concern relates to those instances where a physical change to a well’s status occurs in November 2005 and is also reported to the EUB in November 2005, and captured on the December 1<sup>st</sup>, 2005 EUB disk. Without a “date stamp” indicating when these updates were submitted to the EUB, there is no way to distinguish, on the December 1<sup>st</sup> EUB disks, what well information updates pertain to physical changes occurring in (or prior to) October 31<sup>st</sup>, 2005 versus updates that pertain to physical changes occurring after October 31<sup>st</sup>, 2005 (i.e. in November, 2005). Reported changes or events that physically occurred in November 2005 picked up in the December 1<sup>st</sup> EUB disks are not applicable until the 2007 tax year’s assessment, so it would be incorrect to use this information to calculate the 2006 (tax year) assessment.

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In addressing this concern, the MGB does not see the lack of EUB reporting dates as a barrier to discriminating between pre-October 31<sup>st</sup> physical status and post October 31<sup>st</sup> physical status, where both appear on the December EUB record. The reason for this conclusion is found in the continuation of the above passage of Mr. Driscoll, at page 609 of the merit hearing transcript:

MR. THOMAS:       Wouldn't that be evident on the record that you are going to get, though, that these are subsequent to the 31st? How big a problem would that be?

THE WITNESS:       It's just that there is no -- there is no date stamp when it was entered at the record of the Board on it. It just shows it as having occurred before October 31st, so we don't know when it was entered on the record. And from the legislative perspective, we believe that it's what the linear property owner has recorded on the record of the Board on October 31, 2005. [Underlined emphasis added]

The EUB records themselves indicate the date that a physical change takes place, even if they do not indicate the filing date of that change with the EUB. To further satisfy itself of the fact that the EUB records disclose the date that changes and events physically occur, the MGB reviewed exhibits C2(a) and C2(b), which are the Complainants' GeoVista derivative records of the EUB. The Complainants' witness, Joe Thibault, was cross examined at some length on these records, throughout pages 328 to 342 of the merit hearing transcript. Without repeating the contents of the transcripts here, the MGB notes from its review of the exhibits and the transcripts that the Geo Vista derivative records contain the date when the physical event or change to a well occurs. This evidence further supports the above finding that the records of the EUB (or their Geo Vista derivatives) contain information about the date that an event or physical change in the status of a well took place.

The Respondent can determine from the EUB records if a change to a well occurred prior to October 31<sup>st</sup> and it can also determine if the change was reported by an owner within 30 day reporting period, because that would be captured in the EUB records by December 1<sup>st</sup>. It should have all the reference points it needs to re-calculate the assessments consistent with the MGB's direction. Events taking place after October 31<sup>st</sup> would be indicated in the EUB record, and the assessor would simply exclude these events or changes in well status when calculating the current year's assessment.

### *Issue 2 - Summary*

The Respondent has the ability to access the December EUB records, whether in disk form or otherwise. These records contain data showing the physical characteristics of wells at October month end. The EUB records also indicate the date that an actual physical change to a well or physical event affecting a well occurs. The Respondent therefore has the ability to determine the physical characteristics of a well as at October 31, 2005 and to determine if changes have been



filed with the EUB within at least 30 days from October 31<sup>st</sup>. It has the ability to determine whether or not the physical event underlying an updated EUB record took place before or after October 31<sup>st</sup>, 2005.

The MGB does not accept the Respondent's argument that it is unable to re-calculate the assessments because of a lack of EUB reporting submission dates. Hence, there is no need for the MGB to require further evidence from the parties proving submission dates of changes to wells reported to the EUB. All of the information required to implement the changes to the assessments is contained in the records of the EUB at the relevant dates. If the Respondent is concerned that the December versions of the EUB monthly disks (for example, the EUB's production records disk received on December 8<sup>th</sup>) may contain physical changes that were reported outside of the 30 day period, it can either forgive this late filing and amend the assessment, or it can refer to actual EUB records (other than the disks) on December 1<sup>st</sup>. If the change or event is not present on the December 1<sup>st</sup> EUB record, it can refuse to change the assessment on the basis that it was incumbent on the owner of the well to report the change within the 30 day reporting period.

The Respondent is directed to change the subject assessments as per the MGB's previous order. When implementing the order to re-calculate the subject assessments, the Respondent is to have regard to a 30 day reporting period (from October 31<sup>st</sup>) for information to be filed with the EUB in support of an amended assessment. The MGB directs that well owners need only produce proof of timely filing dates to the Respondent in support of an amended assessment on a well when the EUB records do not properly capture the fact that the change to the well was filed with the EUB within the 30 day deadline from October 31. This is consistent with the intention of s. 292 of the Act that the records of the EUB are the Respondent's first reference point when calculating an assessment. Only when this record is lacking the appropriate information pertaining to the physical status of well on October 31<sup>st</sup> should the Respondent have regard for outside sources of information to calculate the assessment.

### **ISSUE 3: Evidence of Deepest Producing Interval**

#### **Respondent's Position**

The Respondent argues that this issue centers on the direction given to it under the first bullet point on page 28, to recalculate the assessments taking into consideration the term "deepest producing interval" must take into account relevant flow preventing devices recorded in EUB record 055. It submits that, similar to issue 2, this cannot be done, based on the evidence that exists. It states that EUB Directive 007 indicates the relationship required for updating the gross completion interval, Record 075, and completion events. Based on what exists, there is a potential conflict between EUB record 055 and 075. The Respondent questions how these two records are to be reconciled in carrying out the change to the assessments. It asks how a well can have no production below a flow restricting device, and yet the data in record 075 indicates

production below that device. The Respondent takes the position that it is the Complainants who are responsible for reporting to the EUB, and without more information from them about the inconsistency between the two records, a deepest producing interval cannot be determined. The Respondent argues that the Complainants did not bring forward information explaining the inconsistency between the two records at the merit hearing.

**Complainants' Position**

The Complainants asked the MGB to recall the Respondent's position on this issue at the merit hearing that it does not have to have regard for EUB Record 055 when calculating the deepest producing interval, because it interprets the term "deepest producing interval" as being only that data contained in EUB Record 075. The Complainants argue that the same issue was clearly dealt with in the Decision, and that the MGB's direction and findings on the issue were clear. At the merit hearing, the Complainants' evidence established that flow preventing devices are not reported to the EUB using an S-4 statement, as this information is now filed on EUB Record 055. The MGB ordered the Respondent to consider flow preventing devices in EUB Record 055, and to recommend a change to the assessments. It states that by re-raising the issue, the Respondent is going beyond its request for clarification, and is now seeking to undermine the MGB's analysis in the Decision.

**Findings**

1. The MGB made all necessary findings to fully decide the issue of deepest producing interval in the Decision.
2. The MGB will not allow the introduction of further evidence or argument from the parties pertaining to the deepest producing interval.

**Reasons**

Did the Decision Make a Finding on the Deepest Producing Interval?

The Respondent states its request for clarification on this issue as follows:

Does the Board have evidence to reconcile the discrepancy in the information reported to the EUB by the Complainants about the producing interval for each of the LPAU-ID numbers where the determination of depth (n\*) is an issue?

This is a round-about way of stating that EUB Data Element 075 and EUB Data Element 055 sometimes contain different information about what constitutes the deepest producing interval for a given well. The MGB notes that very little argument was made on this issue during the present hearing, and the argument that was raised was no different than that raised at the merit

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hearing. It is apparent that this issue was raised by the Respondent not for clarification or further direction, but in fact as re-argument in hopes that the MGB would reconsider its previous decision. The MGB reiterates that the proper procedure to request a review or re-hearing was not followed by the Respondent. The issue was dealt with in the Decision upon a consideration of the same argument now back before it. The evidence before the MGB at the merit hearing suggested that EUB record 075 used by the Respondent to represent “deepest producing interval” sometimes occurs below plugs or stopping devices that render production below them physically impossible. EUB Record 055 records flow preventing devices and the MGB found that this evidence was directly relevant to the issue of deepest producing interval and should be taken into account in the Respondent’s assessment. A detailed discussion of the MGB’s findings and reasons on this issue is dealt with on pages 14 to 19 of the Decision.

The MGB will not permit an issue that has been dealt with in a previous proceeding involving the same parties to be raised again in a subsequent proceeding unless some compelling reason exists for doing so. No such reason has been brought to the MGB’s attention. The MGB cites the well known common law principles of Res Judicata and Cause of Action Estoppel in support of its decision not to re-consider the Respondent’s argument on this issue. Furthermore, given that this was not a re-hearing, the MGB is *functus* on this issue. The MGB accordingly offers no further findings or reasons on this issue.

## DECISION

1. With respect to all of the subject wells, the Respondent is directed to recalculate the assessments to reflect changes made to wells made on or before October 31, 2005, where subsequent EUB records show that these were reported to the EUB in compliance with the EUB’s deadline of 30 days, which is to be applied in all cases from October 31, 2005.
2. With respect to the wells affected by Issue 3 (the Deepest Producing Interval), 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.
3. All revised assessment amounts and supporting calculations must be submitted by the Respondent to the MGB for approval within 30 days of the date of this order.
4. The above deadline is not a forgiveness of the expired deadline outlined in Board Order MGB 020/07. The new deadline is provided in the hope that the technical calculations required to finalize this matter will be made and submitted promptly, given the existing delay in this matter. The new deadline will not prejudice any future cost application, nor is it meant to detract from the rights or remedies that a party or the MGB may currently have under the Act.

5. The Complainants are at liberty to submit their revised assessment amounts and supporting calculations to the MGB after the expiry of 30 days from the date of this order. The MGB reserves the right to consider the calculations of the Complainants prior to approving the final revised assessment amounts.
6. 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. If the parties have been unable to reach an agreement in relation to the balance of the properties within 21 days, then the parties must comply with the directions laid out in DL 113/07.

**SUMMARY**

The assessment of linear property is foremost driven by the physical characteristics of linear property on October 31<sup>st</sup> of an assessment year. In order to determine what the well characteristics and specifications were on October 31, the Respondent is to have recourse to the EUB records. For the purpose of calculating an accurate assessment, the EUB records should be given regard to at the point in time when they capture the physical characteristics of linear property as they exist on October 31<sup>st</sup>. The preponderance of evidence indicates that in the vast majority of cases, the October 31<sup>st</sup> physical status of a well is reflected in the early December records of the EUB; this is the proper point in time to refer to these records for the purpose of generating linear property assessments.

It is fair that an owner be given an adequate period of time to report pre-October 31<sup>st</sup> changes in the characteristics of wells to the EUB in support of an assessment that properly reflects these changes. The EUB's own reporting deadline for completion events is 30 days from the event or change. The MGB believes that a 30 day deadline from October 31 to report changes to the EUB (for assessment purposes) minimizes delay and administrative inconvenience to the Respondent's assessment process, and is a reasonable amount of time for owners to get accurate information to the EUB in support of the proper assessment. Based on the evidence before the MGB that the December EUB disks contain information up to and including the end of October, changes and events that are reported within this 30 day period (from October 31<sup>st</sup>) should be captured in the records of the EUB by December 1<sup>st</sup>.

The MGB re-iterates its findings in the Decision that the evidence that was before it at the merit hearing suggested on balance that flow-preventing devices such as packing devices recorded in EUB record 055 should be taken into consideration when determining the "deepest producing interval". EUB record 075 used by the Respondent to represent "deepest producing interval" sometimes occurs below plugs or stopping devices that render production below them physically impossible. EUB record 055 records flow preventing devices and the MGB found that this evidence was directly relevant to the issue of deepest producing interval and should be taken into

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account in the Respondent's assessment. EUB record 055 is no less a record of the EUB than record 075 and should be given regard to by the Respondent to generate assessments reflective of the deepest producing interval for each well.

It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta, this 2<sup>nd</sup> day in August 2007.

MUNICIPAL GOVERNMENT BOARD

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(SGD) D. Thomas, Member

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

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**APPENDIX "A"**

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

<b>NO.</b>	<b>ITEM</b>
<u>Respondent</u>	<u>Complainants</u>
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
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 "B"**

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

<b>NO.</b>	<b>ITEM</b>
<u>Complainants</u>	<u>Respondent</u>
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

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## DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB (cont'd)

<b>NO.</b>	<b>ITEM</b>
	<u>Complainants</u> <u>Respondent</u>
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
	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

APPENDIX "C"

SUMMARY & CHRONOLOGY OF RELEVANT EVENTS & CORRESPONDENCE FROM THE PARTIES BETWEEN MARCH 5, 2007 & MAY 18, 2007

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**March 23, 2007** - 19 days after the Decision was sent to the parties, the Respondent wrote to the MGB, indicating that it would not be able to submit the recalculated assessments directed by the MGB within the 30 day deadline contained in clause 4 above. 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.

**April 5, 2007** - The MGB granted the Respondent's request for an extension, directing an additional 30 days to change the assessment.

**April 9, 2007** - The MGB received correspondence from the Complainants, which was copied to the Respondent, indicating that they were not opposed to the extension, that they had already completed the recalculated assessments in accordance with the direction in the Decision, and that they would be willing to share those recalculations with the Respondent and the MGB.

**April 23<sup>rd</sup>, 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.

**April 23<sup>rd</sup>, 2007** - The MGB case manager wrote back to the Respondent seeking clarification as to whether or not the Respondent intended to comply with the new May 4, 2007 deadline for submitting the recalculated assessments.

**April 24, 2007** - The Respondent wrote to the MGB in reply to the April 23<sup>rd</sup> letter from the MGB case manager, and stated that that the MGB would not have the information necessary to exercise its authority to make a change to the assessments by May 4, 2007.

**April 25, 2007** - The Complainants responded in writing to the Respondent's April 23<sup>rd</sup> letter. They objected to the Respondent's request for a hearing, stating that the direction in the Decision was clear, and could be followed.

**April 30<sup>th</sup>, 2007** - The MGB case manager wrote to the parties in order to clarify procedural aspects about the issues and the upcoming hearing (the letter bears an incorrect date of April 23, 2007).

**May 1, 2007** - The Complainants responded in writing to the MGB's April 23<sup>rd</sup> letter, suggesting additional issues that it wished to canvass before the MGB.



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**May 3, 2007** - A formal Notice of Hearing was sent to the parties advising them of a hearing date of May 18, 2007, at 1 p.m., in Edmonton.

**May 4, 2007** - The extended deadline for the DLA to recalculate the assessments expired. No recalculations were submitted to the MGB.

**May 14, 2007** - The Respondent gave further written detail of its position to the MGB and the Complainants with respect to the issues for which it required clarification, and raised certain procedural matters. It indicated that it would be referring to the exhibits and transcript from the merit hearing at the upcoming May 18<sup>th</sup> preliminary hearing.

**May 15, 2007** - The MGB case manager wrote to the parties in order to further clarify aspects about the procedure for the upcoming hearing.

**May 16, 2007** - Further correspondence was sent by the Respondent by email giving notice to the Complainants and the MGB of the specific exhibits and transcript excerpts that it would be referring to in support of its position.