

BOARD ORDER: MGB 011/02

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26.1 of the Statutes of Alberta 1994 (Act).

AND IN THE MATTER OF AN APPEAL to the Municipal Government Board (MGB) pursuant to section 488(1)(a) of the Act.

BETWEEN:

Talisman Energy Inc. represented by G. Ludwig, solicitor for the Appellant

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Lakeland County represented by Ms. Sheila McNaughton, solicitor for the Respondent

BEFORE:

Members:

Dr. E.J. Thompson, Presiding Officer

Mr. D. Thomas, Member

Mr. J. Molaro, Member

Secretariat:

Mr. Don Marchand

Upon notice being given to the affected parties, a hearing was held August 20 to 22, 2001 at the City of Edmonton in the Province of Alberta.

This is an appeal to the Municipal Government Board (MGB) from a decision of the 2000 ARB of Lakeland County (County) with respect to property assessments entered in the 2000 assessment roll of the Respondent municipality as follows:

Roll No. 7400004498

Assessment	Building & Structures	\$2,600
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PRELIMINARY MATTERS

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On September 14, 2001, the subject appeal was heard by three members, one of them being J. Molaro, however, Mr. Molaro's term on the MGB expired on October 31, 2001. The remaining two members of the MGB continued as a quorum of the MGB pursuant to sections 489 and 490 of the Act. Section 489 states "a majority of the members of a panel of the Board constitutes a quorum". Section 490 states that "a decision of a majority of the members of a panel of the Board is the decision of the Board". The remaining quorum of the MGB rendered the decision.

BACKGROUND

In approximately 1983, a system to standardize well site assessment rates was created in Alberta. This was done to avoid the necessity and expense of providing a detailed inventory of well site equipment that otherwise would have had to be reviewed annually for inclusion in linear assessment for the many thousands of well sites existing in the province.

This resulted in certain equipment located at well sites being included in the standardized assessed values for well sites. The well site is assessed as linear property by the designated linear assessor and is limited to equipment captured in the definition of "pipeline". The definition of "pipeline" contains certain exceptions and these exceptions are liable for assessment by the municipal assessor. The exceptions include certain types of equipment or installations known as "machinery and equipment", land, and buildings. In the subject appeal, the municipal assessor has defined the meter protective structure as a building and included it in the property assessment.

For purposes of identification only, the MGB refers to the meter protective structure that is the subject matter of this appeal, and within which metering of the product of the well is accomplished, as the "meter structure". This is the same structure referred to by the Appellant as the "meter box" and by the Respondent as the "meter building".

In January 2000, the Respondent, through its assessor, Mr. R. Affolder, requested field pickup sheets (which lists all equipment or facilities present on a well site) for all of the Appellant's well sites in the County. The reason given was that the assessor was being audited. This information was provided and subsequently a significant number of meter structures located at the Appellant's well sites were assessed by the municipal assessor.

The parties indicated that since the advent of standardized assessment for well sites, this is the first occasion such meter structures have been assessed municipally.

This appeal is regarding one such meter structure at a single well site, but is considered by the parties to be representative of this type of installation at well sites through the County.

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While the issue is limited to whether or not the meter structure is a “building”, the MGB will first have to determine if the metering equipment is included in the standardized well site assessment. If it is determined the metering equipment is included, the MGB must then determine if the meter structure is a building and thereby excluded from the standardized well site assessment.

ISSUES

1. Does the meter structure located at the gas well site qualify as part of “pipeline” under section 284(1)(k)(iii)?
2. If such meter structure does qualify initially for linear assessment consideration, is it yet excluded from the same under the provisions of section 284(1)(k)(iii)(G)?

LEGISLATION

The Act provides a definition for a structure in section 284(1)(j)(i) and (ii) as:

284(1) In this Part and Parts 10, 11 and 12,

(j) "improvement" means

(i) a structure,

(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,

The definition for linear property includes pipelines defined in section 284(1)(k)(iii).

284(1) In this Part and Parts 10, 11 and 12,

(k) "linear property" means

(iii) pipelines, including

(A) any continuous string of pipe, including loops, by-passes, cleanouts, distribution meters, distribution regulators, remote telemetry units, valves, fittings and improvements used for the protection of pipelines intended for or used in gathering, distributing or transporting gas, oil, coal, salt, brine, wood or any combination, product or by-product of any of them, whether the string of pipe is used or not,

(B) any pipe for the conveyance or disposal of water, steam, salt water, glycol, gas or any other substance intended for or used in the production of gas or oil, or both,

(C) any pipe in a well intended for or used in

(I) obtaining gas or oil, or both, or any other mineral,

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- (II) injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,*
- (III) supplying water for injection to an underground formation, or*
- (IV) monitoring or observing performance of a pool, aquifer or an oil sands deposit,*
- (D) well head installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph (C) or for the protection of the well head installations,*
- (E) the legal interest in the land that forms the site of wells used for any of the purposes described in paragraph (C) if it is by way of a lease, licence or permit from the Crown, and*
- (E.1) the legal interest in any land other than that referred to in paragraph (E) that forms the site of wells used for any of the purposes described in paragraph (C), if the municipality in which the land is located has prepared assessments in accordance with this Part that are to be used for the purpose of taxation in 1996 or a subsequent year,*
but not including

The exclusions from linear assessment are found in section 284(1)(k)(F) and (G).

- (F) the inlet valve or outlet valve or any installations, materials, devices, fittings, apparatus, appliances, machinery or equipment between those valves in*
 - (I) any processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facilities, or*
 - (II) a regulating or metering station,*
or
- (G) land or buildings;*

SUMMARY OF APPELLANT'S POSITION

A. Is the Meter Structure a Part of a Pipeline at the Well Site?

The Appellant contends that the meter structure constitutes pipeline as defined in the Act under either or both of two subsections.

Firstly, under the provisions of section 284(1), the meter structure is an improvement installed solely for the protection of the metering equipment contained within it - to ensure its effective functioning. Therefore this unit, which is connected immediately to the wellhead to perform its function, constitutes

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one of the wellhead installations necessarily present at a well site. The provisions of section 284(1)(G) states that facilities for the protection of wellhead installations constitute a part of pipeline.

Secondly, the Appellant states the meter function carried on within the meter structure is for the purpose, among other things, of meeting reporting functions required to be made for this well site to the regulatory authority of the Province of Alberta. As this is the means by which the regulatory authority tracks the production and reserves in such a field, it constitutes the monitoring or observing of a gas pool. This meter structure is a necessary element of such metering and hence a protective structure. Therefore, such function renders this structure a part of linear or pipeline assessment under section 284(1)(k)(iii)(C) and (D).

Being found by either the above subsections as pipeline (linear) removes this meter structure from consideration as a property subject to municipal assessment.

B. Does the Meter Structure Constitute a Building?

The assertion by the assessor, that even should such a meter structure qualify as a part of pipeline or linear assessment, its configuration as a building exempts it from linear assessment, suggesting that it is subject to municipal assessment, is without foundation.

Not all structures need be buildings.

The Act contains no definition of a building. The Act does contemplate improvements used for wellhead installations as part of pipeline or, therefore, linear assessment.

Improvements are further defined in section 284(1)(j) to include a structure. Structure is defined as well in section 284(1)(i) as meaning a building *or other thing*. Thus, clearly a structure need not be a building.

To differentiate, one needs to look at the structure itself: its features and its purpose.

The meter structure in question is a prefabricated metal structure four feet deep by six feet wide and five feet high. This is constructed on a raised platform that elevates the bottom of the structure two to three feet above the ground. The unit is pre-built to include the metering equipment, orifices and catalytic heating equipment all within the structure and is installed as a single unit within the pipeline assembly. In the ordinary course of operation it is not to be entered other than by opening the panel doors at the front of it so that operators may reach in to access readings or maintain the equipment located inside.

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The Appellant contends that the structure cannot be occupied and exists only as a protective structure for the metering equipment contained within it.

C. Historic Assessment Treatment of Meter Structures

Mr. Bill Jesse of AEC Evaluations gave his qualifications to speak to the matter of the historic treatment of such meter structures. He has worked in assessment for many years, particularly in the department handling linear assessment for the Province of Alberta and for some of those years as the chief assessor for that department. Subsequently he worked as senior assessor for the City of Edmonton for several years, retired, and now consults in assessment matters with AEC Evaluations.

He confirmed that he had been a senior assessor with the linear assessment branch in the early 1980's, a time within which efforts were undertaken to create standardized well site assessments for the province.

Mr. Jesse advised that economic studies were undertaken to average the valuations for the usually, or even occasionally, required structures necessary for production at well sites. These values were incorporated into a standardized rate for each type of well site, whether or not all such structures existed at each site. He declared that meter boxes or meter structures were, and are, incorporated into the standardized well rates and hence fall outside of municipal assessment.

The MGB subsequently, on its own initiative, requested the presence of the current chief assessor or co-ordinator for regulated (linear) properties. This party, a Mr. Driscoll, confirmed his opinion that such meter structures remain incorporated in the structured rates for gas wells even if not specifically mentioned in the regulatory tables.

He confirmed that, even with the changes in wording in the current Act, the key question to determine if a structure is within the regulated rates is by determining if it is part of the production for the well, as opposed to the processing of product obtained.

The Appellant further argued that changes within the legislation were simplifications only in the consolidation of several acts into a single act. No particular weight should be read into the withdrawal of Commissions Bulletin #2/86 as advanced by the Respondent since, from testimony given by Mr. Driscoll, departmental practise has not materially changed.

Further, any ambiguity between the wording of the prior *Electric Power and Pipeline Act* and the present Act should be resolved in favour of the ratepayer.

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The Appellant also noted that limitations or derogation from the well-established regulated rate structure for well sites should not be found in ambiguities in legislative working. Given the historic consultative approach that has been taken to regulated assessment, an intended change in treatment would surely be preceded by advice and consultation.

The Appellant argued that, being a part of pipeline assessed under the linear standardized well rate, a separate assessment by the Respondent would render them subject to double taxation.

SUMMARY OF RESPONDENT'S POSITION

A. Is the Meter Structure a Part of a Pipeline at the Well Site?

The Respondent argues that the meter structure fails to qualify as pipeline or linear property. The two sections argued by the Appellant as the basis for finding the meter structure to be part pipeline, fail on the evidence led.

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Firstly, the structures, while undoubtedly of a protective nature, are not protecting part of the wellhead installation. The evidence before the MGB was that this metering structure was several meters away from, and not part of, the wellhead.

Secondly, the metering carried out within the structure was after the obtaining of the product and no clear evidence was led that this constituted the monitoring or observing of a gas pool.

Failing to qualify as part of pipeline or linear, it falls with the responsibility of the municipal assessor to assess.

B. Does the Meter Structure Constitute a Building?

Should it be found that circumstances lead the MGB to consider such meter structure as part of pipeline or linear assessment, it yet falls into the specific exemptions from such treatment by reason that it constitutes a “building”.

The Respondent noted that from a review of this structure’s essential components, it must be a building. It has four walls, a reinforced floor, doors, insulated contents, and a sloping roof. While size alone is not a determination to call such a structure a “building”, this structure is clearly large enough to be entered, even if it is unlikely to be required. Further, the dictionary definition of “building” makes it clear that such a structure may constitute a building if it houses equipment even if it is not meant to be entered or occupied.

Thus, by its components, size, function and general appearance, this can only be described as a building and hence must be outside of linear assessment.

Further, the Respondent noted that rather than there being a potential for double taxation, the failure of the Respondent assessor to assess the structure will leave it outside of any taxing scheme.

C. Historic Assessment Treatment of Meter Structures

The Respondent states that the fact such a meter structure has not historically been assessed municipally is not determinative of this issue.

The Commissioners Bulletin #2/86 that appeared to refer to such structure as a part of the standardized rate has specifically been withdrawn.

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Further, the present standardized well schedule for gas wells makes no specific provision within such standardized rates for such a meter structure, although these rates do specifically cover wellhead protective structures.

The key feature for the MGB's consideration, says the Respondent, is the changed wording in the amalgamated Act, which differs from the wording in the preceding *Electric Power and Pipeline Act*, which was the effective Act at the time of creation of the standardized rates.

The Respondent pointed out that this difference is found in the fact that the Act no longer specifically differentiates between production and processing. Of more importance, section 284(1)(h) no longer reads an exclusion to land and buildings *not otherwise mentioned* but simply mentions "land and building". This, the Respondent believes, clearly implies a different treatment for buildings previously exempted, and that the present Act in force clearly excludes all buildings.

FINDINGS OF FACT

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB finds the facts in the matter to be as follows:

1. Metering that takes place within the meter structure is, among other things, for the purpose of monitoring the gas pool it services.
2. The meter structure forms a necessary protective function to permit metering to occur.
3. The meter structure is not a building as contemplated in section 284(1)(k)(iii)(D).

In consideration of the above, and having regard to the provisions of the *Municipal Government Act*, the MGB makes the following decision for the reasons set out below.

DECISION

The appeal in respect to the following assessment is allowed and the assessment set as follows:

Roll No. 7400004498

Assessment	Building & Structures	\$0
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It is so ordered.

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REASONS

A. Historic Assessment Treatment of Meter Structures

The MGB finds the evidence from Mr. Jesse and Mr. Driscoll to be clear and consistent that historically such meter structures were incorporated with, and considered as part of, linear pipeline assessment. It became somewhat less clear what may be the current status of such meter structure since the change in relevant legislation leading up to the Act.

Mr. Driscoll certainly believed it to remain within the standardized rate, but was not able to point to rate structures or schedules that enunciated his belief.

The Appellant argues that the change in wording in the Act, deleting the proviso “not otherwise mentioned” that had differentiated “building” in the former *Electric Power and Pipeline Act*, may be only a simplification of the wording resulting from the incorporation of several acts into the consolidated Act. Or, indeed, it may also indicate some altered treatment of “buildings” by the current Act, but in either rationale, for the Act to have a bearing, this structure would need to be designated as a building.

The MGB noted that the standardized well rate structure has existed for many years to the mutual benefit of the assessing authority and the owners.

If, as the Respondent alleges, there is a significant shift in policy and practise arising from the wording change coupled with the withdrawal of the prior Commissioner Bulletin, to the MGB this would seem to constitute a significant derogation from the current practise and operation of the standardized rate structure. Assessment in this field has largely operated on a consultative and self-reporting basis. It is the opinion of the MGB that such an intended change would not be effected without some notice or consultation, if for no other reason than to provide some uniformity in practise across the province.

B. Is the Meter Structure a Part of Pipeline at the Well Site?

The MGB found that, while the meter structure is a protective structure for facilities at the well site, it was less clear, particularly as this structure operated some meters from the wellhead, if it was indeed a “wellhead installation”.

However, the MGB does find that the function of the meter structure is a necessary and integral part of the metering function carried on within it.

The evidence confirmed that this meter measures gas flow across an orifice plate to determine production and pressure. Further, it was shown that the operator of the facility has an obligation to

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report such results to the provincial regulatory authority. Therefore, the MGB determined that this metering facility, inclusive of the structure protecting it, operates for, among other things, the monitoring or observing of the pool or reservoir as per section 284(l) of the Act.

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C. Does the Meter Structure Constitute a Building?

Falling within pipeline or linear assessment by virtue of its function, the question remaining for the MGB is whether or not it is then exempted by virtue of section 284(1)(k)(iii)(G), by being a “building”.

The Respondent pointed out that this structure has all the essential components of a building: roof, floor, insulated walls, and doors. According to the Appellant, these features are not exclusive to buildings. They could, in the right instance (as here), similarly describe a box.

Both parties confirm that size alone is not determination of that which is a building, but clearly as such object is reduced in size, a time must come when what otherwise might be called a “building” would be more fairly described as a “box”.

Function alone is not the determining feature of a building either. Here, while human occupancy is not intended for this structure, as the Respondent’s dictionary definition states, it is possible that a building can exist to house or store equipment, which it does here.

The manner of construction or use of the structure adds a further element for consideration. The Appellant notes that this structure is built or assembled concurrently with the metering equipment contained within it and is moved to the site as a single subassembly unit where it remains until operations or economics dictate its removal. At such time it is similarly moved to a different well site as a complete unit.

The MGB, faced with this ambiguity and in the absence of a statutory definition for “building”, and in the absence of appropriate precedent being presented by the parties or found by its own examination, looked at all the indices presented (purpose, size, usage, mode of erection and installation, and the historical content of the governing legislation) and determined that this meter structure is not a building. It is integral to the equipment it contains and is therefore outside the scope of municipal assessment.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 4th day of February 2002.

MUNICIPAL GOVERNMENT BOARD

(SGD.) D. Thomas, Member

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APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Sheila McNaughton	Lakeland County
Randy Affolder	Lakeland County
Harry Schmidt	Lakeland County
Gilbert Ludwig	Talisman Energy Inc.
Wendy Rhyno	Talisman Energy Inc.
Bill Jesse	Talisman Energy Inc.
Rick St. Jean	Talisman Energy Inc.

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
1A	Submission of Talisman Energy Inc.
2A	Supplemental Submission of Talisman Energy Inc.
3A	Assessment Details
4A	Field Pickup Sheets
5R	Submission of Lakeland County
6R	Electric Power and Pipe Line Act
7R	Conversion Table
	Lakeland County Legal Argument
	Talisman Energy Inc. Legal Argument
	Talisman Energy Inc. Final Argument
	Talisman Energy Inc. Response
	Lakeland County Response