

BOARD ORDER: MGB 020/99

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

AND IN THE MATTER OF A COMPLAINT regarding certain 1997 linear property assessments prepared by the Assessor designated by the Minister of Municipal Affairs.

BETWEEN:

Paintearth Gas Co-op Ltd. - Complainant

- a n d -

The Crown in the Right of the Province of Alberta as represented by the
Minister of Municipal Affairs - Respondent

BEFORE:

V. Chatten, Presiding Officer
P. Tichinoff, Member
R. Spero, Member
D. Marchand, Secretariat Advisor

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta on October 1, 1998, having been reconvened from September 10, 1998.

This is a hearing in respect of a complaint filed with the Municipal Government Board concerning 1997 linear property assessments entered in the assessment rolls of the County of Paintearth and the Village of Gadsby as follows:

Municipality	Type	Item	Assessment
County of Paintearth	Pipe	260	\$37,900
Village of Gadsby	Pipe	10	\$5,350
Village of Gadsby	Pipe	30	\$8,380
Village of Gadsby	Pipe	40	\$1,860
Village of Gadsby	Pipe	50	\$20,480
Village of Gadsby	Pipe	60	\$2,980

PRELIMINARY MATTERS/BACKGROUND

An initial hearing was held on September 10, 1998, at which time the Respondent requested a postponement to brief legal counsel on the outstanding issues between the parties. Mr. Husar, on behalf of the Respondent, advised the Board that there had been ongoing negotiations between the parties and it had been anticipated that the outstanding issues might be resolved without the necessity of a hearing. Mr. Burgess, on behalf of the Complainant, concurred that discussions between the parties had been taking place and indicated that he did not object to a postponement. Both parties advised that the issue or issues to be addressed at a merit hearing of this Board were common to other gas cooperatives and that the merit hearing of these linear assessments would operate to some extent as a test case. Having heard representations from both parties, the Board granted a postponement on the express understanding that the merit hearing would proceed without further delay on a fixed date of October 1, 1998, at 9:00 a.m. The Board cautioned both parties that sanctions might follow if there were further postponement requests. The Complainant and Respondent agreed that they would handle the exchange of documentation directly in this matter without the need for the intervention of or deadlines imposed by the Board. Neither party requested costs of the hearing.

At the commencement of the hearing on October 1, 1998, the Complainant and Respondent advised the Board that they had reached agreement in respect of that portion of the appealed linear property located in the County of Paintearth and being a gas conveyance pipeline identified as Pipe 260 and having an assessment of \$37,900. Specifically, the Respondent made a recommendation and the Complainant agreed that the linear property identified as Pipe 260 in the County of Paintearth should be non-assessable. All of the remaining linear property under appeal is located in the Village of Gadsby and no agreement was reached between the Complainant and Respondent regarding its disposition for assessment purposes.

The Complainant, Paintearth Gas Co-op Ltd., is a rural gas cooperative association organized under the Rural Utilities Act. The Complainant was granted a franchise under the Gas Distribution Act for an area shown on drawing 1616-700 (included within Exhibit 4) published by the Department of Transportation and Utilities. In fact, the boundaries of the franchise area granted to the Complainant coincide with the boundary of the County of Paintearth, but exclude those municipalities within the franchise area which have their own gas distribution system. However, for clarity, all of the territory within the Village of Gadsby is within the franchise area of the Complainant. The Village of Gadsby has a population of approximately 40 people. The Complainant owns a rural gas utility within the boundaries of the franchise area and the franchise allows the Complainant to operate a rural gas utility within the boundaries of the franchise area. The Complainant does not presently serve any industrial customers which consume 10,000 gigajoules or more of natural gas per year. The Respondent has assessed the gas conveyance pipeline and all of the distribution lines within the Village of Gadsby, which are shown on drawing 1616-303 (forming part of Exhibit 4) published by the Department of Transportation and Utilities.

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ISSUES

1. Are the gas conveyance pipeline and the gas distribution lines, located within the Village of Gadsby and owned by the Complainant, assessable or non-assessable as linear property?

LEGISLATION

In the course of their presentations, the Complainant and Respondent directed the Board to various relevant legislative provisions, including following:

Section 31 (1) (d)

In this section

(d) “urban gas system” means the system or works of a public utility for the distribution of gas to consumers within an urban area.

Section 298(1)(r) and (r.1) of the Municipal Government Act

298(1) No assessment is to be prepared for the following property:

- (r) linear property forming part of a rural gas distribution system and gas conveyance pipelines situated in a rural municipality where that linear property is owned by a municipality or a rural gas co- operative association organized under the Rural Utilities Act, but not including gas conveyance pipelines owned by rural gas co- operative associations*
 - (i) from the regulating and metering station to an industrial customer consuming more than 10,000 gigajoules of gas during any period that starts on November 1 in one year and ends on October 31 in the next year and that precedes the year in which the assessment for those pipelines is to be used for the purpose of imposing a tax under Part 10, or*
 - (ii) that serve or deliver gas to*
 - (A) a city, town, village, summer village or hamlet, or*
 - (B) an urban service area as defined in an order creating a specialized municipality*
- that has a population of more than 500 people;*
- (r.1) linear property forming part of a rural gas distribution system where that gas distribution system is subject to a franchise area approval under the Gas Distribution Act.*

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Section 284(1)(k)(iii) of the Municipal Government Act

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,*

Section 362 (1)

The following are exempt from taxation under this Division

(b) property held by a municipality, except the following:

(v) a natural gas or propane system located in a hamlet, village, summer village, town or city or in a school district that is authorized under the School Act to impose taxes and has a population in excess of 500 people.

Sections 1(p), 1(m), 15, 16, and 17 of the Gas Distribution Act

1 In this Act,

- (p) rural gas utility means a system of pipelines used for the supply, transmission, distribution and delivery of gas to consumers in a franchise area;*
- (m) plant means a pipeline that*
 - (i) is part of a rural gas utility, and*
 - (ii) is dedicated to supplying gas to that portion of a franchise area that is annexed by an urban municipality;*

15(1) A person who proposes to construct a rural gas utility must first apply for a franchise area approval in respect of the rural gas utility.

(2) An application for a franchise area approval must

- (a) be filed with the chief officer, and*
- (b) include the information that the chief officer requires to determine whether the rural gas utility will be economically viable and whether the distributor will be able to comply with the standards referred to in section 2.*

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(3) When a franchise area approval is issued, it must exclude areas contained within the boundaries of an urban municipality unless the council of the urban municipality agrees to the provision of gas service to the residents of the urban municipality by the distributor to which the franchise area approval applies.

(4) Notwithstanding subsection (3), a franchise area approval must exclude the area contained within the boundaries of an urban municipality if the council wishes to confer a municipal franchise on the distributor.

16(1) A franchise area approval must prescribe the franchise area for the rural gas utility of the distributor to whom it is issued.

(2) The boundaries of a franchise area must

- (a) coincide as nearly as possible with existing municipal boundaries, and
- (b) avoid conflict with the boundaries of existing gas utility systems.

(3) In determining the boundaries of a franchise area, the chief officer must

- (a) take into consideration natural boundaries or obstacles that may inhibit growth of the rural gas utility or cause economic hardship for the distributor, and
- (b) ensure that local conditions and the community of interest among potential consumers are recognized.

(4) The chief officer shall not issue a franchise area approval unless the chief officer is satisfied that it is in the public interest to do so, having regard to the availability of other sources of gas, the present and future need for the extension of gas service throughout rural Alberta and any other circumstances that in the chief officers opinion are relevant to the public interest.

(5) This section applies to a distributor to whom a franchise area approval is issued notwithstanding any other Act or any agreement or instrument made or issued under any other Act.

17(1) A distributor holding a franchise area approval has both the exclusive right and the duty to offer and provide gas service to all potential consumers within the distributors franchise area.

(2) Notwithstanding subsection (1), a distributor does not have the exclusive right to provide gas service to the following consumers:

- (a) a consumer using gas as a feedstock;
- (b) a consumer who holds the royalty rights to gas and who uses that gas to serve the consumers own requirements, notwithstanding that the consumer may already have obtained natural gas service from the distributor;
- (c) a consumer who obtained natural gas service from another person prior to the date that the distributor obtained its franchise area approval;
- (d) a consumer who will use natural gas service on an intermittent or standby basis, other than for grain drying or irrigation purposes;
- (e) a consumer whose estimated annual energy use from natural gas service for purposes other than farming operations is greater than 10 000 gigajoules.

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(3) Nothing in subsection (2) shall be construed so as to prohibit a distributor from offering and, if the offer is accepted, from providing service to any of the consumers referred to in subsection (2) who are located within the distributors franchise area.

(4) Notwithstanding subsection (1), the chief officer may waive a distributors duty to provide gas service to a consumer who is located within the distributors franchise area if the chief officer is satisfied that it is not economically feasible for the distributor to provide service to that consumer.

For the purposes of this Board Order reference to the Municipal Government Act shall hereinafter be referred to as “the Act.” All other statutes shall be referred to in this Board Order by full name.

SUMMARY OF COMPLAINANT’S POSITION

Leo Burgess appeared on behalf of the Complainant and, with evidentiary support from David Campbell and Henry Tomlinson, argued in favor of an exemption in respect of the linear property under appeal.

On a preliminary basis, Mr. Burgess noted that basic facts are not in dispute between the Complainant and Respondent. Specifically, Mr. Burgess advised that the Complainant had been granted a franchise under the Gas Distribution Act to operate a rural gas utility within the franchise area as identified as drawing 1616-700 published the Department of Transportation and Utilities. The Complainant owns and operates a natural gas utility within the boundaries of the franchise area which includes the territory within the boundaries of the Village of Gadsby. Although the population of the Village of Gadsby is approximately 40 people, Mr. Burgess acknowledges that it is an urban municipality as defined in the Act.

Further, Mr. Burgess indicated that the Complainant is not disputing that the distribution lines and gas conveyance pipeline under appeal are linear property as defined in section 284(1)(k)(iii) of the Act. However, the Complainant’s position is that the distribution lines and gas conveyance pipeline are exempt from assessment under section 298(1)(r) and (r.1) of the Act.

Based upon an exhaustive review of section 298(1)(r) and (r.1) of the Act, Mr. Burgess submitted that the linear property under appeal qualifies for exemption under both sections for the following reasons:

- a) In respect of 298(1)(r) of the Act, the linear property must be part of a rural gas distribution system or the linear property must be a transmission line located in a rural municipality. The linear property must be owned by a municipality or by a rural gas cooperative association organized under the Rural Utilities Act. The exceptions are linear property which serves or delivers gas to an urban municipality or hamlet which has a population in excess of 500 people; or linear property which serves an industrial customer which consumes more than

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10,000 gigajoules of natural gas per year. Clearly, the exceptions do not apply to the Village of Gadsby which has a population of approximately 40 people and no large industrial users and;

- b) The linear property is also exempt from assessment under 298(1)(r.1) of the Act because the linear property is part of a rural gas distribution system and is within a franchise approval area under the Gas Distribution Act.

Mr. Burgess then referred at length to the Gas Distribution Act to clarify that the distribution lines within the Village of Gadsby are part of a “rural gas distribution system” as that term is used in section 298(1)(r) and (r.1) of the Act. At the outset, Mr. Burgess advised that a “rural gas utility” as defined in section 1(p) of the Gas Distribution Act is the system of pipelines used to supply, distribute and deliver natural gas to consumers within a franchise area. In particular, Mr. Burgess noted that section 1(p) of the Gas Distribution Act does not distinguish between rural and urban municipalities. Under section 15 of the Gas Distribution Act, a rural gas franchise can include areas within the boundaries of both rural and urban municipalities. Section 16 of the Gas Distribution Act states that a franchise approval must prescribe a franchise area which is defined in section 1(f) as “the area of land in Alberta” that is described in a franchise area approval agreement. In this context, Mr. Burgess submits that it is clear that a franchise area can include both rural and urban municipalities.

Mr. Burgess explained that there are distinct types of franchises which can be obtained by a gas utility. Firstly, there is a franchise granted pursuant to the Gas Distribution Act. Secondly, there is a franchise which can be granted to a municipality pursuant to section 45 of the Act. Any potential conflict between a franchise under the Gas Distribution Act and a municipal franchise is resolved by section 15(4) of the Gas Distribution Act, which provides that an area within a municipal franchise cannot be included in a franchise under the Gas Distribution Act.

Contrary to the Respondent’s proposed position, Mr. Burgess indicated that a rural gas distribution system does not stop being part of a rural system when it enters an urban municipality such as the Village of Gadsby. The Complainant asserts that the Respondent’s position is inconsistent with the intent and meaning of section 298(1)(r) and (r.1) of the Act. Mr. Burgess alleged that a rural gas distribution system under the Act is not substantially different than a rural gas utility under the Gas Distribution Act. A rural gas utility can only operate if it has a franchise under the Gas Distribution Act or a municipal franchise; therefore, a rural gas utility which has a franchise can be the only entity (other than a municipality) which can operate a rural gas distribution system. To suggest that a gas distribution system is not part of a rural gas utility under the Gas Distribution Act would create an absurd result.

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Mr. Burgess contended further that if a rural gas distribution system was intended to refer only to facilities within the rural municipality, then it would render totally meaningless subsection (ii) of section 298(1)(r) of the Act. In particular, subsection (ii) provides that the exemption from assessment is not applicable in an urban municipality which has a population in excess of 500 people. If indeed facilities within an urban municipality are never exempt from assessment, there would be no reason for an exception for urban municipalities with a population in excess of 500 people.

Mr. Burgess further noted that, historically, gas distribution lines owned by a rural gas cooperative such as the Complainant, have never been assessed. Although the exemptions relating to rural gas utilities were restructured under the Act, there is only one substantive difference between the old and the new provisions in that the old provisions addressed only distribution lines. Mr. Burgess argued that because the new amendments were designed to address only transmission lines, there is no reason to change the practice of exempting from assessment all distribution lines owned by a rural gas co-operative. In fact, the witnesses, Messrs. Campbell and Tomlinson had indicated that in discussions with the Department of Municipal Affairs, it was clear that the intention was to have the exemption continue.

In summary, Mr. Burgess indicated that the appealed linear property in the Village of Gadsby and owned by the Complainant are part of a rural gas distribution system for all of the reasons set out above. The area within the Village of Gadsby is part of the franchise area granted to the Complainant under the Gas Distribution Act and the test for exemption of the appealed linear property under the Act has been met by the Complainant. Accordingly, Mr. Burgess on behalf of the Complainant requested that the exemption be granted.

SUMMARY OF RESPONDENT'S POSITION

Michelle Annich appeared on behalf of the Respondent and, with evidentiary support from Jerry Husar, argued against the granting of an exemption in respect of the linear property under appeal.

On a preliminary basis, Ms. Annich indicated that the Minister's designated assessor had properly determined that the gas distribution system located in and serving the Village of Gadsby is assessable as set out in the pipeline assessment notice issued. The assessment was clearly made in accordance with the assessment provisions of the Act, Standards of Assessment Regulations and the Minister's Guidelines. The designated assessor also properly determined that the assessment exemption provisions relating to rural gas distribution systems as set forth in sections 298(1)(r) and 298(1)(r.1) of the Act did not apply to the gas distribution system within the Village of Gadsby. Ms. Annich argued that the onus is upon the Complainant to establish that it falls within the relevant assessment exemption provisions. In the present case, Ms. Annich indicated that the Complainant cannot establish that section 298(1)(r) applies to exempt from assessment any of its low pressure gas pipelines contained within the Village of Gadsby and serving the consumers within the Village of Gadsby. Gadsby is a Village and therefore an urban municipality as that term

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is defined in section 31(1)(e) of the Act. Ms. Annich asserted that a plain reading of section 298(1)(r) of the Act indicates that the assessment exemption is intended to apply only to a certain type of gas distribution system and that is a rural gas distribution system. Clearly, the gas distribution system located in the Village of Gadsby and serving Gadsby consumers is an urban gas distribution system. Urban gas distribution systems do not fall within the stated assessment exemption set out in section 298(1)(r) of the Act and therefore the designated assessor correctly did not exempt the linear property within the Village of Gadsby from assessment.

Ms. Annich noted that the word “rural” precedes the defined phrase “gas distribution system” in section 298(1)(r) of the Act and it operates as an adjective describing the nature of the “gas distribution system” which is exempt from assessment under section 298(1) of the Act. Rural, as defined in Black’s Law Dictionary, means “concerning the country as opposed to urban (concerning the city)” or as defined in Webster’s dictionary “of or relating to the country, country people life or agriculture.”

In the context of the plain reading of the Act and the related regulations, a “rural gas distribution system” is the low pressure pipeline or system of pipelines located in a rural municipality used for the distribution of gas to consumers in the immediate rural municipality.” Ms. Annich asserted that only “gas distribution systems” located in a rural municipality, serving rural consumers and owned by gas cooperatives, are exempt from assessment under section 298(1)(r) of the Act. Ms. Annich argued that it follows that gas distribution systems in urban municipalities such as the Village of Gadsby serving urban consumers are in fact assessable when owned by municipalities or gas cooperatives because they are not expressly referenced by the assessment exemption provision.

Ms. Annich suggests that this interpretation is supported by the fact that the municipally owned gas distribution systems in urban municipalities are assessable, but those having a population of 500 or less are exempt from taxation under section 362(1)(b)(v) of the Act, meaning that gas distribution systems in urban municipalities must make it onto the assessment roll in order for the tax exemption provision to have any meaning.

Ms. Annich suggested that the assessment and assessment exemption provisions must be interpreted in harmony with the scheme for this portion of the Act. The intent is to afford assessment exemption to gas distribution systems and gas conveyance pipelines when they are located in a rural municipality.

The interpretation of rural gas distribution system is supported by the definition of urban gas system as set out in section 31(1)(d) of the Act. Urban gas system is defined as the system or works of a public utility for the distribution of gas for consumers within an urban municipality. Clearly, the word “urban” works as an adjective much the same way as “rural” does in section 298 of the Act. For clarity, it describes the location of the system and the nature of the consumers of the gas distribution system.

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Ms. Annich noted that the legislature avoids superfluous or meaningless words, therefore, if the legislature had intended that the gas distribution system of a gas cooperative to be exempt under section 298 regardless of the urban or rural nature of the municipalities, there would be no need to insert the word “rural” in front of the defined term “gas distribution system.” Therefore, the interpretation proposed by the Complainant rendered meaningless the word “rural” preceding gas distribution system in section 298(1)(r) and (r.1) of the Act. Further, Ms. Annich indicated that the fact that rural gas distribution system is subject to a “franchise area approval” is irrelevant as it is not mentioned in section 298(1)(r) of the Act.

Ms. Annich submitted that the assessment exemption contained in section 298(1)(r.1) of the Act must be interpreted in the light of the assessment exemption already granted in section 298(1)(r) of the Act. The intention surrounding this amendment was clearly to ensure that investor-owned gas distribution systems receive the same assessment exemptions which municipalities and rural gas cooperative associations received. This is consistent with the scheme of that part of the Act which is to ensure that gas distribution systems, which are rurally located and serving rural customers, receives the benefit of assessment exemption regardless of ownership.

Ms. Annich argued that the rationale for the interpretation of section 298(1)(r.1) of the Act is supported by the interpretation provisions cited in Morguard Properties Ltd. v. City of Winnipeg as well as the principles of implied exclusion. The foregoing principles of interpretation were applied by the Alberta Court of Queen’s Bench in the Ukrainian Youth Unity of General Roman Schuhewych-Chuprynka v. City of Edmonton where it was agreed that the legislature must be taken to have meant different things by creating separate categories.

Ms. Annich indicated that even if there was an overlap between section 298(1)(r) and (r.1) of the Act, the words “rural gas distribution system” would have the same meaning as in section 298(1)(r) of the Act. Ms. Annich suggested that the phrase “rural gas distribution system” cannot be equated to the phrase “rural gas utility” as defined under the Gas Distribution Act which interpretation is implicitly proposed by the Complainant in its arguments regarding the applicability of the assessment exemption described in section 298(1)(r.1) of the Act. Clearly, if the legislature intended that rural gas utility is equal to rural gas distribution system, the legislature would have used this phrase in section 298(1)(r) and (r.1) of the Act.

In summary, the Respondent submitted that the only logical interpretation of section 298(1)(r) and (r.1) of the Act is that the linear property within the Village of Gadsby owned by the Complainant has been properly assessed by the designated assessor and Ms. Annich asserted that the appeal should fail on its merits and accordingly be dismissed.

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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 and C attached hereto, the Board finds the facts in the matter to be as follows:

1. The linear property under appeal is owned by the Complainant which is a rural gas cooperative association organized under the Rural Utilities Act and the linear property is part of an approved franchise area under the Gas Distribution Act.
2. The linear property, including the gas conveyance and distribution lines under appeal, is located within the Village of Gadsby and is part of a rural gas distribution system operated by the Complainant.
3. The Complainant conveys and distributes gas to the Village of Gadsby, which is a centre with a population less than 500, and the Complainant serves no industrial customer consuming more than 10,000 gigajoules per year within the Village of Gadsby.
4. The definition of “rural municipality” in the context of non - assessable linear property, more specifically, conveyance lines includes population centres under 500 that are both urban and rural municipalities.
5. The Complainant at all times operates a rural gas distribution system even when conveying and distributing to the Village of Gadsby.

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

DECISION

Part 1

Upon recommendation of the Respondent, with the agreement of the Complainant, the following linear property is non-assessable:

Municipality	Type	Item	Assessment
County of Paintearth	Pipe	260	Non-assessable

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Part 2

The complaint of the Complainant is allowed and the following linear property is non-assessable:

Municipality	Type	Item	Assessment
Village of Gadsby	Pipe	10	Non-assessable
Village of Gadsby	Pipe	30	Non-assessable
Village of Gadsby	Pipe	40	Non-assessable
Village of Gadsby	Pipe	50	Non-assessable
Village of Gadsby	Pipe	60	Non-assessable

It is so ordered.

REASONS

At the outset, the Board accepted the recommendation of the Respondent, with the agreement of the Complainant, regarding the removal of the assessment of the gas conveyance pipeline located in the County of Paintearth and identified as Pipe 260.

In respect of the remaining issues in dispute, the Board based its decision on definitions, context of the definitions and the legislative schemes outlined in the Act, because the Municipal Government Act (Act) sets out the directives for assessment procedures. The Act is paramount in addressing assessment issues. The Complainant, in particular, also raised for the Board's consideration the Rural Utilities Act and the Gas Distribution Act. The Board found that while these two statutes did not particularly shed any light on the handling of assessment issues, it was necessary to consider whether or not the Complainant qualifies as a rural gas cooperative association in the manner prescribed under Section 298 (1) (r) of the Act or whether the linear property under appeal is subject to a franchise area approval under the Gas Distribution Act, as referenced under Section 298 (1) (r.1) of the Act.

In respect of the linear property under appeal within the Village of Gadsby, the Board notes that there was very little issue between the Complainant and Respondent regarding the basic facts of the situation and the Board accepts that the Complainant is a gas cooperative incorporated under the Rural Utilities Act and that Complainant has been granted a franchise under the Gas Distribution Act for a defined area, which includes the Village of Gadsby. The Board accepts that the franchise allows the Complainant to operate within the franchise area. The Board further accepts that the Complainant operates a rural gas distribution system within the franchise area and this is one area the Complainant and the Respondent differ somewhat in their opinion. With respect, the Board does not agree with the Respondent that the Complainant operates a gas distribution system which is a rural gas distribution system, when it is in a rural area serving rural customers, and an urban gas distribution system when it is located within the Village of Gadsby

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and serving consumers within the Village of Gadsby. For clarity, the Board has determined that at all times the Complainant is operating a rural gas distribution system even within the Village of Gadsby.

The Board does not see “rural” within the context of section 298 (1)(r) and (r.1) of the Act as a describing adjective but part of the title of the rural gas distribution system serving a variety of centers. Consistent with certain principles of interpretation cited by the Respondent, the Board also finds that the word “rural” is not superfluous or meaningless wording, but again part of broader context inferred by the reference to centers including hamlets and urban service areas within section 298 (1)(r) and (r.1) of the Act.

The Board, having heard the argument of both parties and having reviewed with great consideration the whole of Section 298 (1) (r) and (r.1) of the Act, examined carefully the context in which rural municipality is used in the sections. The Board cannot accept the restricted definition as proposed by the Respondent. The Board interprets the reference to “rural” within the broader context of rural gas distribution systems as envisaged by the sections. Rural municipality in Section 298 (1) (r) of the Act, in the view of the Board, means a general rural location and does not refer to a legal or traditional definition of the status of municipality.

The Board accepts the argument that if the legislature had intended to exclude all rural gas cooperatives serving an urban municipality, it would have not been necessary to include a reference to urban municipalities with a population greater than 500. This reference, in the view of the Board, qualifies and expands the reference to rural municipality in section 298 (1) (r) of the Act.

The Respondent argued that their interpretation of rural gas distribution system is supported by the definition of “urban gas system” defined in Section 31 (1)(d) of the Act. The Board finds this argument fails because the definition of urban gas system is confined to that part of the Act dealing with public utilities and not assessment matters. Section 31 (1) of the Act states “in this section urban gas system means” Clearly, the use of this definition is limited not only to this Division of the Act but to specifically Section 31. Without a specific cross reference in Part 9 and more specifically in Section 298 (1) (r) and (r.1) of the Act, the Board cannot accept that the definition in Section 31 can qualify the definition of rural gas distribution system.

The Board also looks to section 298(1) (r) and (r.1) of the Act for guidance on this matter. In that regard, the Board does concur with the Respondent that section 298(1)(r) and (r.1) of the Act must be given separate and distinct interpretations. The Board concurs with the decisions in Morguard Properties Ltd. v. City of Winnipeg that no portion of a statute be rendered meaningless, pointless or redundant and also the Ukrainian Youth Unity case which indicated that the legislature must be taken to have meant different things by creating separate categories. Clearly, section 298 (1) (r.1) of the Act makes a rural gas distribution system that is organized under the Rural Utilities Act and subject of an approved franchise area under the Gas Distribution

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Act non-assessable, thus qualifying the Paintearth Gas Co-op Ltd. distribution system within Gadsby to be non-assessable.

With regard to the conveyance system within the Village of Gadsby, the Board is satisfied that section 298 (1) (r) of the Act makes the conveyance system non-assessable within the Village, having a population of 500 or less, and no industrial customers consuming greater than 10,000 gigajoules per year. Accordingly, while the Board is fully satisfied that the Complainant's conveyance system to and within Gadsby is non-assessable under section 298(1)(r) of the Act, there is no reason why the Complainant distribution system would not also be entitled to be non-assessable under section 298(1)(r.1) of the Act as a rural gas distribution system.

As the Respondent suggested, the legislation should be interpreted to give a harmonious result. With direction from the Respondent, the Board looked to section 362 (1) (b) (v) of the Act and the treatment of municipally-operated gas systems. The above noted exemption for municipally-owned gas systems does not provide any distinction between urban and rural because it also includes hamlets. Those centers with a population less than 500 are exempted. Although section 362 of the Act refers to taxation matters, the Board sees this use of "rural" in this section as a parallel to the use of "rural" in section 298 (1) (r) of the Act, that is, a broad definition of "rural". The inclusion of municipally-owned gas systems in section 298 (1) (r) of the Act also further identifies the need to have a harmonious interpretation of the legislation. The proposition to interpret the legislation to assess rural gas systems in a different manner would not result in equity or a harmonious legislative interpretation. The only conclusion the Board can reach is that the legislators intended rural gas cooperatives be treated harmoniously as the municipality-operated gas systems and others would be.

In the final analysis, it is the Board's view that it would work a mischief and yield an absurd result if a village of 40 people were considered to be assessable when rural areas of larger populations would not be assessable, considering the specific reference to a population level of 500 for various types of population centers in the sections, and the specific mention of rural gas distribution systems not being assessable.

In addition to the arguments above, the parties provided a description of the evolution of the legislation and the intent of the legislators from the prospective of each party. The Board finds the evolution of the legislation into today's version does not support the proposition that a rural gas distribution system was intended to be assessed in specific situations.

Under the previous Municipal Taxation Act, certain linear property owned or operated by a rural gas cooperative association or that is part of a system serving population centers of less than 500 was not assessable. Currently, the Act directs that no assessment be prepared for a rural gas distribution system in a rural municipality organized under the Rural Utilities Act and franchised under the Gas Distribution Act.

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Under the current Act, conveyance lines to serve populations greater than 500 and serving industrial customers using greater than 10,000 gigajoules per year are assessable. The Board observes that the only substantial difference in the current Act in contrast to the pre-January 1, 1998 version is the reference to “situated in a rural municipality.” The Board finds this wording awkward and the focus of the dispute. If the legislators clearly wished this phrase to be restrictive, it is the Board’s view they would have used specific municipal terminology to refer to municipal districts and counties rather than the more general phrase which currently exists. The Board concludes that a consistent theme appears to exist in the evolution of the legislation which points to no assessment being prepared for rural gas distribution systems operated by rural gas co-operative associations. The Board accepts the argument of the Complainant on the evolution of the legislation.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 19th day of January, 1999.

MUNICIPAL GOVERNMENT BOARD

V. Chatten, Presiding Officer

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APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Leo Burgess	Counsel for the Complainant
David Campbell	Representative of the Complainant
Henry Tomlinson	Representative of the Complainant
Allan Dietz	Representative of the Complainant
Michelle Annich	Counsel for the Respondent
Gia Wong	Counsel for the Respondent
Jerry Husar	Designated Assessor for the Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
Exhibit 1	Brief of the Complainant
Exhibit 1b	Gas Distribution Act
Exhibit 2	Curriculum Vitae of K. David Campbell
Exhibit 3	Corporate Profile of Campbell Wright Engineering Ltd.
Exhibit 4	Drawings
Exhibit 5	Respondent's submissions

APPENDIX "C"

DOCUMENTS RECEIVED AFTER THE HEARING AND CONSIDERED BY THE BOARD:

Supplemental Brief of the Complainant
Respondent's Witness and Summary Submissions