

**BOARD ORDER: MGB 030/00**

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

**AND IN THE MATTER OF COMPLAINTS** by Talisman Energy Inc. for the 1999 Linear Property Assessment;

**BETWEEN:**

Talisman Energy Inc. (Talisman) - Complainant;

and

The Queen in Right of the Province of Alberta as represented by the Minister of Municipal Affairs (the Linear Assessor) - Respondent

**BEFORE:**

**The Alberta Municipal Government Board (the Board)**

V. Chatten, Presiding Officer  
P. Tichnoff, Member  
P. VanBelle, Member  
B. Fenske, Secretariat  
D. Hawthorne, Secretariat

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta commencing Tuesday, November 30, 1999, continuing on December 1, 2, & 3, 1999, and concluding on December 13, 1999.

These are complaints to the Board following issuance of the 1999 linear property assessments for Talisman. The complaints reference linear property located in three Alberta municipalities and more specifically identified as follows:

**Wheatland County**

<b><u>PPI-ID Number</u></b>	<b><u>Assessed Value (\$)</u></b>	<b><u>Reasons for Complaint</u></b>
<b>396278</b>	<b>35,450</b>	<b>Previously transferred to Husky</b>

Municipal District of Greenview

<u>PPI-ID Number</u>	<u>Assessed Value(\$)</u>	<u>Reasons for Complaint</u>
321130	1460	Previously transferred to Amoco
321131	227,940	Previously transferred to Amoco
321132	2970	Previously transferred to Amoco
321133	1900	Previously transferred to Amoco
323623	1460	Previously transferred to Amoco
323624	231,550	Previously transferred to Amoco
323625	9680	Previously transferred to Amoco
323626	6200	Previously transferred to Amoco
326265	1460	Previously transferred to Amoco
326266	262,460	Previously transferred to Amoco
326267	26480	Previously transferred to Amoco
326781(withdrawn)	43,620	Previously transferred to Amoco
408572	56140	Flowline for non-producing well

Municipal District of Wainwright

<u>PPI-ID Number</u>	<u>Assessed Value(\$)</u>	<u>Reasons for Complaint</u>
8311	15,030	Pipeline Length, Size
8318	9,800	Pipeline Length, Size
8321	12,980	Pipeline Type, Product, Length, Size
8324	8,820	Pipeline Length, Size
8333	3,380	Pipeline Size
8358	7,730	Pipeline Size
8366 (withdrawn)	12,200	Pipeline Status
8530	36,340	Pipeline Length, Product
8539	14,050	Pipeline Type, Product
8548	5,320	Pipeline Size, Type
8551 (withdrawn)	15,500	Pipeline Length, Size, Type
8557	6,770	Pipeline Size
8560	4,180	Pipeline Type
8563	5,840	Pipeline Type
8566	1,040	Pipeline Type
8569 (withdrawn)	10,440	Pipeline Type, Size
8575	13,990	Pipeline Type
8578	1,040	Pipeline Type, Size
8581	5,410	Pipeline Length, Size
8590	1,040	Pipeline Type, Size, Length

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<u>PPI-ID Number</u>	<u>Assessed Value(\$)</u>	<u>Reasons for Complaint</u>
8593	12,730	Pipeline Type
8596	5,220	Pipeline Type, Size
8602	7,330	Pipeline Type
8605	11,460	Pipeline Length
8608	8,580	Pipeline Type, Length
8617	51,850	Pipeline Type, Length, Product
8652	5,920	Pipeline Product
8664	1,940	Pipeline Type
8667	27,630	Pipeline Type, Length
8670 (withdrawn)	13,900	Pipeline Length
8685	1,280	Pipeline Type, Length
8688	9,230	Pipeline Type
8691	8,620	Pipeline Type
15622	1,040	Pipeline Type, Length
15637	4,180	Pipeline Type
15645	2,090	Pipeline Type
15656 (withdrawn)	1,280	Pipeline Size
15746	35,920	Pipeline Type, Size, Length
15759	10,260	Pipeline Type
15765	1,020	Pipeline Type
15768	1,280	Pipeline Type
15773	7,100	Pipeline Type
15776	9,230	Pipeline Product
15789 (withdrawn)	10,670	Pipeline Type, Length
15,791 (withdrawn)	1,280	Pipeline Type, Size, Length
15794 (withdrawn)	25,660	Pipeline Type, Size, Length
15820	1,040	Pipeline Type, Length
15829 (withdrawn)	1,330	Pipeline Product, Type, Size
15832	68,740	Pipeline Type, Size
15837 (withdrawn)	960	Pipeline Type

**PREAMBLE**

The matter before the Board is whether or not certain linear property complaints have merit, but in hearing the matter, a party to the complaints raised the issue of the Board's jurisdiction. At the request of one of the parties, and with the agreement of the parties, the issue of jurisdiction would be heard prior to the consideration of the merits of each complaint. Accordingly, this Board Order deals with submissions on jurisdiction in Part 1, followed by submissions on the merit in Part 2. The requests for costs is addressed in Part 3

## **INTRODUCTION**

### **Party Position Overview**

#### Jurisdiction

##### Complainant

The Board has jurisdiction to hear matters arising from a request for information pursuant to section 295(1) of the Act. In addition, the request for information was a request to provide a report under section 292 of the Act, not a joint request under sections 292 and 295 of the Act.

##### Respondent

The letter of December 3, 1998, and accompanying Well and Pipeline Reporting Procedures Handbook (Handbook) was a joint request under both section 292 and 295 of the Act. The Complainant failed to report as requested. Accordingly the Board lacks jurisdiction to hear the complaints upon notification that information was not provided pursuant to a request under section 295(1) of the Act.

#### Merit

##### Complainant

Wheatland: linear property is not owned by Talisman or it does not exist.

Greenview: linear property not owned by Talisman and Declarations of Special Operator filed on or before February 16, 1999, and in one instance, a flowline is from a non producing well.

Wainwright: pipeline specifications, i.e. length, type, size or product, incorrectly listed.

##### Respondent

Wheatland: agree linear property not owned by the Complainant.

Greenview: agree linear property not owned by Complainant and that the flowline is from a non producing well.

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Wainwright: agree that the items identified by the Complainant are in error as to either or a combination of length, type, size or product.

### **Interlocutory Hearing Issues**

Throughout the hearing the Board was asked to decide and rule on points of procedure, and admissibility of evidence.

The interlocutory issues considered and ruled upon by the Board during the hearing, included the following:

#### **1. Court Reporter**

The Respondent had arranged for a court reporter to be present and to take a transcript throughout the hearing. The Complainant was in agreement with a record of the hearing being prepared and clarified that the parties had agreed the Complainant would receive one complete copy of the transcript at no additional cost. The Board also concurred with the presence of a court reporter and directed that one copy of the complete transcript be provided to the complainant at no cost and four copies to the Board at no cost.

#### **2. Procedure for Conduct of Hearing**

The parties raised numerous inquiries and objections regarding the scope of evidence admissibility and procedures to be followed. Pursuant to the Act, the Board has the discretion to set its own procedure and the Board allowed both parties significant latitude in the presentation of their respective cases. The Board was satisfied that each solicitor would point out in argument, any inconsistency or irrelevancy in the other's evidence.

While the usual procedure is for the Complainant to proceed first, the parties requested, and the Board ruled, that the Respondent would proceed first on the jurisdictional issue as the issue arises from the Respondent's application in the first instance under section 295(4) of the Act. The agreed upon procedure was directed by the Board as follows:

- (a) Opening statement by the Respondent on the jurisdictional issue
- (b) Opening statement by the Complainant on the jurisdiction issue
- (c) Evidence of the Respondent's witnesses respecting jurisdiction
- (d) Questions from the Complainant
- (e) Questions from the Board Members
- (f) Redirect by the Respondent, if any
- (g) Evidence of the Complainant's witnesses respecting jurisdiction
- (h) Questions from the Respondent
- (i) Questions from the Board Members

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- (j) Redirect by the Complainant, if any
- (k) Summary of evidence and arguments of the Respondent on jurisdiction
- (l) Summary of evidence and arguments of the Complainant on jurisdiction
- (m) Rebuttal by the Respondent.

#### 4. Jurisdiction and Merit

Arising out of the decision of the Board in Board Order MBG 212/99 and amending Order MGB 217/99, the Board confirmed that the Respondent could make application for a ruling on jurisdiction before proceeding to hear merit evidence and argument.

The Respondent requested that, at the conclusion of the Complainant's evidence on jurisdiction, the Board rule that the merit aspect of the complaints be held over until the Board has decided the jurisdictional issues. The Respondent argued that it is more appropriate to hear detailed evidence on the merit and decide on the complaints after the issue of jurisdiction is settled. There would not be a time saving in consolidating both merit and jurisdictional matters.

The Complainant argued that a great deal of the merit information had already been adduced. The further details on merit are so simple that the Board should hear their submission. This would allow Ms. Bielecki, a witness for the Complainant, to complete her testimony.

The Board found that the evidence on merit and jurisdiction appear to overlap and both parties had already presented evidence that may well impact merit as well as jurisdiction. Further, it is very difficult for the Board to determine what information is required in the context of Section 295(1) of the Act without having an accurate understanding of the facts surrounding the merit of these complaints.

The Board further ruled the procedure would be as follows:

- (a) Evidence of Complainant's witnesses on merit
- (b) Questions from the Respondent
- (c) Questions from the Board
- (d) Evidence of the Respondent's witnesses on merit
- (e) Questions from the Complainant
- (f) Questions from the Board
- (g) Summary and argument on merit together with cost submissions and any additional summary and argument on jurisdiction to the issues together by the Complainant

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- (h) Summary and argument on merit together with cost submissions and any additional summary and argument on jurisdiction to the issues together by the Respondent.
- (i) Rebuttal by the Complainant

### 3. Notice of Hearing to Third Parties

The Respondent advised the Board that depending upon the manner in which the evidence unfolded in this hearing, there were other parties who might have a stake in the decision and therefore the hearing should not continue without their participation. In particular if the subject of a complaint relates to ownership, the party named as owner should at least be issued notice of this hearing.

The Complainant's Solicitor assured the Board that he had authority to act in this hearing for each named party with respect to the linear property and no further notice need be issued.

The Board ruled the hearing will proceed.

### 4. The Conduct or Ethics of the Director, Linear Property Assessment

In response to an objection to a question of the Director, Linear Property Assessments, regarding his conduct or ethics, the Board ruled that questions of this nature are immaterial to the issues and such lines of questioning must cease.

### 5. Witnesses Handwritten Notes

During the course of testimony by a witness, it was observed that the witness was making reference to notes that were not part of the exchange of evidence and argument ordered by the Board in previous Board Orders. Counsel for the Respondent requested that the witness make a copy of the subject notes available. The Board ordered the notes be copied and made available to all parties and the Board, and that any future witness making use of notes during testimony must make the notes available to the parties.

## **Common Terms**

In this Board Order the Board uses the following common terms:

**Linear Assessor** - The person designated by the Minister pursuant to s.284(1)(d) and s.292(1) of the Act to prepare the linear assessment.

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Assessment Year - The year in which the assessment was prepared. For the purpose of these complaints the assessment year is 1998.

Taxation Year - The year following the assessment year. For the purpose of these complaints the taxation year is 1999.

Detailed Equipment Listing - The list of items attached to the letter sent by the Linear Assessor in November/December of each year asking operators of linear assessment for an update. Normally each item has a unique PPI-ID. Occasionally in this Board Order the phrase “equipment listing” or “listing” is also used,

PPI-ID - Permanent Property Identification code given to each piece of linear property.

Line Item - Each item in a list attached to the assessment notice describing the location, characteristic, and the assessed value of each item which make up the assessment for each operator in each municipality. Normally each line item has a unique PPI-ID.

### **BACKGROUND**

#### Historical perspective

There are approximately 160,000 wells, either oil or gas, and 160 to 165,000 pipelines in the Province. The wells and pipelines are owned by approximately 1,300 different companies and are located in 305 municipalities. The total assessment generated by all linear property is approximately \$25 billion of which approximately \$19 billion are designated as the assessed value for pipelines and wells.

Linear Property is assessed in the year prior to the year in which assessment notices are issued and the property is placed on the assessment and tax roll of the municipalities in which it is located. In the case of 1999 complaints, the property was assessed in 1998, the assessment year, and placed on the 1999 assessment roll for taxation in 1999.

Prior to the 1998 assessment year the Linear Assessor sent out a Well and Pipeline Procedures Handbook together with an equipment listing to all the operators of linear property and requested the operators to report any corrections, additions and deletions.

In order to assist the persons responsible for reporting, the Linear Assessor issued further instruction and held a series of training seminars and meetings. These meetings were for the purpose of reviewing the Handbook and answering any questions arising from the use of the Handbook.



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Based on the equipment listing and comments received from the operators, the assessments would be prepared and the assessment notices issued by the Linear Assessor. If during the course of the year, additional corrections, additions and deletions were identified, the Linear Assessor would make changes to the assessment roll and issue amended notices. If any dispute arose during the course of the year between operators or between operators and municipalities, the Linear Assessor would attempt to resolve the dispute and if necessary, amend the assessment roll. If complaints were launched the Linear Assessor would make a correction or defend the assessment before the Municipal Government Board.

### Program For Reporting In 1998

For the purposes of the 1998 Assessment Year, the Linear Assessor again prepared a Well & Pipeline Reporting Procedures Handbook, which received Ministerial Approval under Ministerial Order L:536/98. The purpose of this Handbook was to assist the operators of linear property in reporting their inventory of wells and pipelines. It identified the responsibilities of the operator in reporting, what they were to report and how they were to report. The Handbook was mailed to the “assessee/agent” under cover letter dated December 3, 1998.

In order to assist the persons responsible for reporting, the Linear Assessor issued further instruction and held a series of training seminars and one on one advisory meetings. These meetings were for the purpose of reviewing the Handbook and answering any question arising from the Handbook.

### Letter to the Operators of Linear Property

The letter dated December 3, 1998, from the Linear Assessor stated:

“This letter is a formal request for linear property information from your company.”

The letter further stated:

“The request is made in accordance with section 292(3) of the Municipal Government Act which states that your company is to provide a report to the Minister, and section 295(1) of the Act which states that your company must provide information requested by an assessor.”

The letter then drew attention to a different reporting period than normal and included specific direction that reporting be done in a specific manner as follows:

“Section 292(3) of the Act, requires the requested information to be provided by December 31, 1998. However, for this year the date by which your company must

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report the information has been extended by Ministerial Order to February 15, 1999. Please note that the information must be provided in the manner described in the Well and Reporting Procedures Handbook.”

In addition to providing a brief description of the contents of the package and the changes introduced for the 1999 tax year, the letter also stated:

“It is also important for you to be aware that, beginning in 1999, the Linear Assessor will not be sympathetic towards companies in a self-reporting system that do not report information in the required format and within the legislated time frame. Failure to provide the information will result in the Linear Assessor making all efforts to strictly enforce section 295(4) of the Act. This section provides that NO PERSON MAY APPEAL AN ASSESSMENT IF THE INFORMATION REQUESTED BY THE ASSESSOR IS NOT PROVIDED ON OR BEFORE FEBRUARY 15, 1999. Accordingly, please ensure the information is received at the address shown below on or before 4:30 p.m., February 15, 1999.”

Well & Pipeline Reporting Procedures Handbook

The Handbook was attached to the letter of December 3, 1998, and in the introduction to the Handbook it is stated as follows:

“The procedure handbook has been developed to help you understand what is required to report changes to your inventory since last year and to outline your reporting responsibility under section 292 and section 295 of the Municipal Government Act (MGA). To ensure the accuracy of your assessment and to preserve your right to appeal your assessment, it is imperative that you follow the reporting procedures described in this handbook.”

With respect to the Well Detail Report, the preliminary instructions are:

“It is important to note that the well detail report mailed in November is preliminary information subject to your review. Review the data and make changes on the report (IN RED) and return the changes to the Pipeline Assessment Section by February 15, 1999. Changes that are verified will be included with your assessment in March.”

With respect to the Pipeline Detail Report, the preliminary instructions are:

“It is important to note that the pipeline detail report mailed in November is preliminary information subject to your review. Review the data and make changes on the report (IN RED) and return the changes to the Pipeline Assessment

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Section by February 15, 1999. Changes that are verified will be included with your assessment in March.”

### Follow-up Correspondence

Under the date of December 22, 1998, the Director of Linear Property Assessments advised the assessee/agents by general mailing that the staff of the Linear Property Assessment Section were available to meet with persons needing assistance reporting on well and pipeline inventory in conjunction with the Handbook. The letter gave dates the staff would be available and advised that any meeting would be by appointment only. The letter included a reminder that:

“you must report your well and pipeline inventory in the manner described in the Handbook. The information must be received by the Assessment Services Branch on or before 4:30 p.m., February 15, 1999. Failure to provide the information will result in the Linear Assessor making all efforts to strictly enforce section 295(4) of the Act which states that no person may appeal an assessment if the information requested by the assessor is not provided.”

Under the date of January 12, 1999, the Director, Linear Property Assessment, sent to the assessee/agent what was termed additional assistance for the reporting. This included the 1999 Alberta Linear Property Assessment Manual, remaining dates available for meeting with the staff of the Linear Property Assessment Section, clarification regarding well ownership and clarification for reporting of pipelines added to the inventory since the previous year. The letter concluded by reminding the recipient of the impact of section 295(4) of the Act.

### Assessment Notice for the 1999 taxation year

Under the date of March 25, 1999, the Director, Linear Property Assessments, sent to Municipal Administrators the assessment notices and assessment summaries for the linear property in their municipalities and giving direction for preparation of the 1999 assessment and tax roll. The letter included advice that:

“Linear property companies have been informed that the Linear Assessor will not be sympathetic towards companies in a self-reporting system that do not report information in the required format and within the legislated time frame. The Linear Assessor will make all efforts to strictly enforce section 295(4) of the Act which provides that no person may appeal an assessment if the information requested by the assessor is not provided on or before February 15. *Please note that information received on February 16 was accepted because February 15 fell on a statutory holiday.*

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It is the departments' view that no inventory record (PPI ID) can be appealed if details respecting that record were not reported prior to February 16, 1999. The exceptions include:

- a) specific information related to a record that was reported within the deadline but that information was incorrectly processed by the department or was not processed for some reason,
- b) any record (PPI ID) of well information that is identified in the record change column of the detailed report for the first time,
- c) any record (PPI ID) of pipeline information that has been transferred to your inventory and caused a duplicate record.”

The Linear Property Assessment Notice, mailed from Edmonton March 31, 1999, to the assessed persons, included a statement that “In accordance with the Municipal Government Act, no person may make a complaint in the current year about an assessment for linear property if the person failed to provide the information requested by the assessor with respect to preparing the assessment.”

### Complaints

On March 31, 1999, the Linear Assessor issued the 1999 Linear Property Assessment Notices for the 1999 taxation year. The notice contained instructions that any complaint about an assessment must be filed with the Board within 30 days of the mailing date shown on the notice. Talisman lodged complaints with the Board within the 30 day deadline.

Following filing of the complaints by Talisman as well as other operators of linear property, the Linear Assessor advised the administrative staff of the Board that he intended to challenge the Board's jurisdiction to accept and hear certain complaints, because, in the Linear Assessor's opinion, certain operators of linear property failed to report by the February, 16 1999 deadline, the information which had been requested by the Linear Assessor on December 3, 1998. The Linear Assessor claimed that Section 295(4) of the Act states that an assessed person cannot lodge a complaint if the person has failed to provide the information requested by the assessor.

The administrative staff of the Board conducted several meetings with the complaining parties and the Linear Assessor respecting the 295(4) challenge made by the Linear Assessor and to determine a method for the scheduling of jurisdictional hearings and the logistics required for dealing with over 10,000 complaints from assessed persons of linear property. All affected parties interested in the preliminary process agreed that two agents acting on behalf of a number of Complainants would meet with the Linear Assessor, identify selective complaints and that these selected complaints would be the subject of the first hearings into the merits of the complaints to the 1999 Linear Property Assessment.

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As a result, the Board held a preliminary hearing on October 13 and 14, 1999, which resulted in Board Order MGB 212/99 establishing dates for the hearings of the complaints, dates for exchange of evidence and argument and hearing procedures. Subsequently, Amending Order 217/99 was issued recognizing changes needed for upcoming exchange dates and hearing dates.

As a result of meetings between the two parties and the preliminary hearing, the parties determined that complaints relating to three municipalities would constitute the matters before the Board for the purpose of this hearing. The three municipalities are Wheatland County, and the Municipal Districts of Greenview and Wainwright.

### LEGISLATION

The Board received substantial evidence and argument that is grounded in the legislation as it existed at the time the linear property assessments under complaint were prepared. To understand the focus and intent of the parties position, the Board found it necessary to quote the legislative context of linear assessments.

#### **Municipal Government Act - Consolidated as of July 6, 1998**

Talisman Energy Inc., with respect to the subject property, is the assessed person on the assessment rolls of the three named municipalities. The Director, Linear Property Assessment, Alberta Municipal Affairs, is the Linear Property Assessor by virtue of delegation of the designated assessor.

*284(1)(a) "assessed person" means a person who is named on an assessment roll in accordance with section 304;.....*

*(d) "assessor" means*

*(i) a person designated by the Minister, or*

*(ii) a person appointed by a municipality to the position of designated officer to carry out the duties and responsibilities of an assessor under this Act, and includes any person to whom those duties and responsibilities are delegated by the person referred to in subclause (i) or (ii);.....*

For the purposes of the subject complaints, linear property is defined as pipelines and well head installations, but generally includes other types of property.

*284(1)(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*

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*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 oil or gas, or both, or any other mineral,*

*(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, license 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*

*(F) the inlet valve or outlet valve or any installations, materials, devices, fittings, apparatus, appliances, machinery or equipment between those valves in*

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*(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;*

Under Section 304, the assessed person for the purposes of linear assessments is the operator of the linear property who is defined as:

*298(1)(p) "operator", in respect of linear property, means*

- (i) the owner of the linear property,*
- (ii) a person who has applied in writing to and been approved by the Minister as an operator of linear property,*
- (iii) for linear property described in clause (k)(iii) (A) or (B), the permittee or licensee as those terms are defined in the Pipeline Act, or*
- (iv) for linear property described in clause (k)(iii) (C) or (D), the operator of a battery as that phrase is defined in the regulations under the Oil and Gas Conservation Act;*

The legislation sets out who is to prepare linear assessment and how a linear assessment are to be prepared.

*292(1) Assessments for linear property must be prepared by the assessor designated by the Minister.*

*(2) Each assessment must reflect the valuation standard set out in the regulations for linear property.*

*(3) Each assessment must be based on a report provided by December 31 to the Minister by the operator of linear property, showing*

- (a) the specifications and characteristics of the linear property on October 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the linear property,*
- (b) the legal descriptions of the parcels of land occupied by the linear property, where appropriate,*
- (c) the address to which assessment notices may be sent, and*
- (d) any other information requested by the Minister.*

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*(4) If an operator of linear property does not provide the report required by subsection (3), the assessor must prepare the assessment using what ever information is available about the linear property.*

With respect to all types of property, the legislation sets out the responsibility of an assessor in preparing assessments.

*293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,*  
*(a) apply the valuation standards set out in the regulations, and*  
*(b) follow the procedures set out in the regulations.*

*(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.*

In preparing assessments, an assessor does have the right to inspect property subject to certain conditions.

*294(1) After giving reasonable notice to the owner or occupier of any property, an assessor may at any reasonable time, for the purpose of preparing an assessment of the property or determining if the property is to be assessed,*  
*(a) enter and inspect the property,*  
*(b) request anything to be produced to assist the assessor in preparing the assessment or determining if the property is to be assessed, and*  
*(c) make copies of anything necessary to the inspection.*

*(2) When carrying out duties under subsection (1), an assessor must produce identification on request.*

On request, a person must provide the information to enable an assessor to prepare an assessment or lose their right to file a complaint about their assessment.

*295(1) A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed.*

*(2) An agency accredited under the Safety Codes Act must release, on request by the assessor, information or documents respecting a permit issued under the Safety Codes Act.*

*(3) An assessor may request information or documents under subsection (2) only in respect of a property within the municipality for which the assessor is preparing an assessment.*



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*(4) No person may make a complaint in the current year under section 460 or, in the case of linear property, under section 492(1), about an assessment if the person has failed to provide the information requested under subsection (1) in respect of the assessment on or before February 15 of the year following the assessment year.*

Any person refusing entry to an assessor or refuses to provide information, may be subject to an Order of the Courts ordering the person to allow inspection or to produce a document.

*296(1) An assessor described in section 284(d)(i) or a municipality may apply by originating notice to the Court of Queen's Bench for an order under subsection (2) if any person*

- (a) refuses to allow or interferes with an entry or inspection by an assessor, or*
- (b) refuses to produce anything requested by an assessor to assist the assessor in preparing an assessment or determining if property is to be assessed.*

*(2) The Court may make an order*

- (a) restraining a person from preventing or interfering with an assessor's entry or inspection, or*
- (b) requiring a person to produce anything requested by an assessor to assist the assessor in preparing an assessment or determining if property is to be assessed.*

*(3) A copy of the originating notice and each affidavit in support must be served at least 3 days before the day named in the notice for hearing the application.*

The assessment roll for the taxes in each year must be prepared on February 28 of each year.

*302 Each municipality must prepare annually, not later than February 28, an assessment roll for assessed property in the municipality.*

As stated, it is the operator of the linear property who is the assessed person on the assessment roll.

*304 (1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.*

*Column 1  
Assessed property*

*Column 2  
Assessed person*

*(i) linear property;*

*(i) the operator of the linear property;*

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The assessor may correct the roll in that assessment year if an error is discovered, but an amended notice must be issued.

*305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,*

*(a) the assessor may correct the assessment roll for the current year only, and*

*(b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.*

*(2) If it is discovered that no assessment has been prepared or adopted for a property and the property is not listed in section 298, an assessment for the current year only must be prepared and an assessment notice must be prepared and sent to the assessed person.*

*(3) If exempt property becomes taxable or taxable property becomes exempt under section 368, the assessment roll must be corrected and an amended assessment notice must be prepared and sent to the assessed person.*

*(4) The date of every entry made on the assessment roll under this section must be shown on the roll.*

The assessor, with respect to linear property, must prepare the assessment notices, mail them to the assessed person and municipality and the municipality puts the assessment on its assessment roll for taxation in that year.

*308(2) The assessor designated by the Minister must annually*

*(a) prepare assessment notices for all assessed linear property,*

*(b) send the assessment notices to the assessed persons, and*

*(c) send the municipality copies of the assessment notices.*

*(2.1) The municipality must record on the assessment roll the information in the assessment notices sent to it under subsection (2)(c).*

Assessment notices must be sent either before or at the same time as the tax notice in the case of non-linear property, but in either case, if the address is unknown, the notice is deemed to be mailed.

*310(1) The assessment notices must be sent no later than the date the tax notices are required to be sent under Part 10.*

*(2) If the mailing address of an assessed person is unknown,*

*(a) a copy of the assessment notice must be sent to the mailing address of the assessed property, and*

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*(b) if the mailing address of the property is also unknown, the assessment notice must be retained by the municipality or the assessor designated by the Minister, as the case may be, and is deemed to have been sent to the assessed person.*

Complaints about linear property are to the Board.

*488(1) The Board has jurisdiction*

*(a) to hear complaints about assessments for linear property,*

*(2) The Board must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a), (b) and (c).*

Complaints about linear property assessment are not limited to valuation, but may include many other matters.

*492(1) A complaint about an assessment for linear property may be about any of the following matters, as shown on the assessment notice:*

*(a) the description of any linear property;*

*(b) the name and mailing address of an assessed person;*

*(c) an assessment;*

*(d) the type of improvement;*

*(e) school support;*

*(f) whether the linear property is assessable;*

*(g) whether the linear property is exempt from taxation under Part10.*

*(1.1) Any of the following may make a complaint about an assessment for linear property:*

*(a) an assessed person;*

*(b) a municipality, if the complaint relates to property that is within the boundaries of the municipality.*

Proceedings before the Board

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

*(2) The Board may require any person giving evidence before it to do so under oath.*

*(3) Members of the Board are commissioners for oaths while acting in their official capacities.*

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Upon complaint about a linear property assessment, the Board may dismiss the complaint if it was not made in time, may make a change or confirm the assessment, but must always make such decisions in the context of fairness and equity.

*499(1) On concluding a hearing, the Board may make any of the following decisions:*

*(a) dismiss a complaint or an appeal that was not made within the proper time;*

*(b) make a change with respect to any matter referred to in section 492(1), if the hearing relates to a complaint about an assessment for linear property;*

*(2) The Board must not alter*

*(a) any assessment that is fair and equitable, taking into consideration assessments of similar property in the same municipality,*

The Board can award costs.

*501 The Board may determine the costs of and incidental to any hearing before it and decide by whom and to whom the costs are to be paid.*

### **ALBERTA REGULATION (Municipal Government Act)**

#### **STANDARDS OF ASSESSMENT REGULATION 365/94**

In valuing linear property, the assessor does so in accordance with the Minister's Guidelines. These guidelines establish specific rates for types and sizes of linear property.

*6 Valuation standard for linear property*

*(1) The valuation standard for linear property is that calculated in accordance with the procedures referred to in subsection (2).*

*(2) In preparing an assessment for linear property, the assessor must follow the procedures set out in the Alberta Linear Property Assessment Minister's Guidelines established and maintained by the Linear Assessor of Municipal Affairs, as amended from time to time.*

### **Ministerial Orders**

In accordance with section 284 of the Act, as it pertains to the appointment of an assessor and under the authority of section 292 of the Act, the Minister of Municipal Affairs ordered, under Ministerial Order No. L: 536/98, dated December 7, 1998, the appointment of the assessor for the preparation of the assessments and approved the Well and Pipeline Reporting Handbook (1999).

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“I, Iris Evans, Minister of Municipal Affairs, pursuant to section 284(1)(d)(i) and section 292 of the Municipal Government Act make the following order:

1. The person in the position of Executive Director, Assessment Services Branch, Alberta Municipal Affairs, is designated
  - (a) as an assessor within the meaning of s.284(1)(d)(i); and
  - (b) as the assessor responsible for the preparation of assessments for the linear property.
2. The Executive Director, Assessment Services Branch, as the assessor responsible for the preparation of assessments for linear property under section 292, is entitled to request and receive information pursuant to section 292(3).
3. For the purpose of section 292(3) of the Municipal Government Act the following manuals are approved for the reporting of information required by the assessor designated by the Minister:
  - (a) the Well and Pipeline Reporting Procedures Handbook (1999) attached as Schedule “A”; and
  - (b) the Linear Property Assessment Reporting Procedures Handbook for Electric Power Systems and Telecommunications Systems (1999) attached as Schedule “B”.

If the Act or a Regulation establish a time for doing a certain thing, the Minister, under the authority of section 605 of the Act, may extend that time, which was done in respect to when a report must be provided for linear property and when a municipality must prepare their assessment roll for linear property.

“I, Iris Evans, Minister of Municipal Affairs, pursuant to section 605 of the Municipal Government Act, makes the following order:

This order only applies to linear property described in section 284(1)(k) of the Municipal Government Act.

The date by which an operator of linear property must provide a report, as described in section 292(3) of the Municipal Government Act, to the assessor designated by the Minister is extended to February 15, 1999.

To enable the municipality to record information on the assessment roll in accordance with section 308(2.1) of the Municipal Government Act, the date for preparation of the assessment roll pursuant to section 302 of the Municipal Government Act for linear

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property described in section 284(1)(k) only, is extended to April 1, 1999 for all municipalities.”

### **Summary of Respondent’s Position Regarding Events Leading Up To The Filing of Complaints**

#### History

Alberta Municipal Affairs is charged with the responsibility of preparing the linear assessments for 305 municipalities in the Province of Alberta. The Minister of Municipal Affairs designated Mr. B. Pickering as the Linear Assessor and Mr. Pickering delegated the authority to prepare the assessments to Mr. J. Husar, Director, Linear Property Assessment. In addition to the preparation of the linear assessment, the Linear Assessor has the ongoing responsibility to manage the changes, additions and deletions in the assessment.

The general scheme of the legislation relating to linear assessments is a self reporting system. Linear assessment is a co operative self reporting effort between the designated Assessor and the assessed person. The Assessor prepares an equipment listing based on the previous years assessment and the assessed person is obligated to report in accordance with the directions contained in the Handbook. The reporting generally consists of making additions, amendments and deletions to the previous years assessments.

The corrected equipment listing is used to establish the assessment. The Assessor can use the Alberta Energy and Utilities Board (AEUB) records to validate the changes offered by the assessed person. Based on this information, the Assessor then prepares the linear assessment by municipality and issues the assessment notices to the municipalities and assessed person.

The assessed person then has 30 days from the date of the notice in which to file a complaint with the Board. The Board hears the complaint and may order a change to the roll. Outside of the reporting period, the Assessor did process changes advanced by both the municipalities and the assessed person by corrections to the roll pursuant to section 305 of the Act.

As a result of the ongoing changes to the assessment roll after the mailing of the assessment notices, the municipalities have complained assessments rolls were unstable. In addition poor, or a lack of, reporting calls into question whether or not the assessments were fair and equitable. As a result, the municipalities requested the Linear Assessor not to make changes unless directed by the Board in order to stabilize the assessment roll. A stable assessment roll is essential for the municipality to set the mill rate and distribute the tax load fairly.

The municipalities also questioned the completeness of the assessment. In 1996 ten rural municipalities identified many pipelines which were not reported and therefore not assessed. As a result, the Linear Assessor commissioned Colt Engineering Ltd. to do an audit of the pipelines in

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12 municipalities which discovered approximately \$179 million of unreported pipeline assessment. Subsequently, considerable amount of duplication was found in the “unreported pipeline assessment” identified by Colt Engineering. The Linear Assessor followed up with a complete audit of the entire province which resulted in an increase in the pipeline assessment.

For the purpose of the 1999 taxation year, the Act was amended by the addition of subsections 295(2)(3) and (4) of the Act, Subsection (4) states:

*(4) No person may make a complaint in the current year under section 460 or, in the case of linear property, under section 492(1), about an assessment if the person has failed to provide the information requested under subsection (1) in respect of the assessment on or before February 15 of the year following the assessment year.*

Subsection (4) removes the right of complaint from those companies which fail to report as requested by the Assessor

### Communication

The 1999 Handbook was prepared by the Linear Assessor, approved by the Minister and sent to all companies. The Handbook was designed to insure that the reporting would result in a correct and fair assessment. Both the covering letter of December 3, 1998 and the preamble to the Handbook emphasized that section 295(4) would be utilized if reporting was not done in the manner prescribed by the Handbook.

The Linear Assessor conducted training seminars to introduce the new procedures to the companies which included the following 10 basic changes as referenced in the Handbook:

- All wells and well sites are found on the well detail listing.
- All wells are now assessed to licensee per AEUB records.
- All well locations reflect surface location rather than bottom hole location as in the past.
- What was “flowline” on the prior well and flowline listing is now on the pipeline detail report.
- What was “linepipe” on the prior linepipe assessment listing is now found on the pipeline detail report.
- Your assessee code will now reflect your AEUB code.
- Additional depreciation will be given to oil wells that produce less than 177m<sup>3</sup> annually, gas wells that produce less than 507m<sup>3</sup> annually, injection/disposal or water wells that produce less than 720 hours annually and to shallow gas wells. These will be reflected on your assessment mailed in March. This information will be extracted from AEUB records. You are not required to report production information to us.
- Assessed values for wells will not appear on the November listing.

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- Assessed values for pipeline will appear on the November listing. Assessed values for flowlines are subject to change if the well status is updated. These changes will appear on your assessment mailed in March.
- If a change occurs a “c” will be noted in the Rec. Chg. Area and asterisk will appear beside the component that changed.

The Linear Assessor also gave the companies the opportunity to meet one on one with Department representatives to assist in the understanding and application of the Handbook. As well, the Linear Assessor accepted inquires by telephone. Actual reporting consisted of making changes to the equipment listing in red and returning those equipment listing sheets with inventory changes.

### Implementation

The process of reporting was initiated on December 3, 1998, by the mailing of the Handbook and letter of transmittal, together with the detailed listing. Originally reporting was to be completed by February 15, 1999, but because February 15 fell on a holiday, this was extended to February 16, 1999.

The Linear Assessor would evaluate the information reported by the operator and determine which changes would be made to the assessment. The Linear Assessor did not notify the operator of changes that were not accepted. The assessment was then prepared in accordance with the Linear Property Assessment Manual and assessment notices mailed to both the assessed person and the municipalities on March 31, 1999.

### Reporting

The Complainant did receive the detailed equipment listing. While the Complainant did return some sheets of the detailed equipment listing, no complete reporting was done for linear property in Wheatland County, Municipal Districts of Wainwright and Greenview.

### Complaints filed with the Municipal Government Board

No complains could be filed unless:

- changes identified by the operator in red on the returned detailed equipment listing.
- errors in reporting by the operator
- changes introduced by the Assessor

In addition, complaints could not be filed for any changes identified after February 16, 1999, pursuant to section 295(4) of the Act and no changes to the assessment would be made pursuant to section 305 of the Act except in exceptional circumstances.



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Approximately 10,000 linear property complaints were filed with the Board. They were reviewed by the Respondent against the returned detailed equipment listing sheets to determine which complaints may be subject to section 295(4) of the Act. The representative of the Complainant was advised by letter of the application of section 295(4) of the Act and that only those complaints regarding specific items for which a change had been noted on the returned detailed equipment listing sheets were valid.

### **Cross Examination of the Respondent's Witnesses**

#### History

The Linear Assessor confirmed that prior to 1999, section 305 of the Act was used extensively to correct errors in the linear property assessment throughout the year. For 1999, section 305 has been used in a discretionary fashion and section 295(4) of the Act has been invoked to negate changes regarding line items on which the operators did not report.

#### Communication

The Linear Assessor confirmed that the letter of transmittal dated December 3, 1998, together with the Well & Pipeline Reporting Procedures Handbook is considered the official request for information and that this request was in the nature of an equipment audit.

The Linear Assessor agreed that many changes were made in the Handbook including the use of a new identification number that did not coincide with AEUB data, using the surface location as a means to identify locations of wells and separating the flow lines from the wells and renaming these pipelines.

Reporting instructions given by the Linear Assessor at the seminars in November was that only those sheets which included changes should be sent back. Sheets with no changes were not to be sent back.

The Linear Assessor also confirmed that March 31, 1999, was the commencement of the complaint period and the covering letter for the assessment notices stated that complaints could be made only on items that were changed in the reporting period. Complaints on items discovered to be incorrect after the reporting period are subject to section 295(4) of the Act.

#### Implementation

The Linear Assessor acknowledged the detailed equipment listing tracking system did not record all of the information communicated by the companies.

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### Reporting

The Linear Assessor acknowledged he was unable to accurately confirm the status of any specific reporting as of any given point in time.

### Complaints

The Linear Assessor acknowledged that his intent regarding section 295(4) of the Act was to reduce the actual number of complaints, but that it had the opposite effect of increasing the number of complaints.

The Linear Assessor did confirm that even if a complaint was subject to section 295(4) of the Act, if the matter was deemed significant, the Linear Assessor would review and correct under section 305 of the Act. Each case would be examined and judged at the discretion of the Linear Assessor.

### **Summary of Complainant's Position Regarding Events Leading Up To Filing of Complaints**

#### History

Prior to the 1998 assessment year, the detailed equipment listing was generally received by the companies by mid November. This is contrasted with the year under complaint when the listing was mailed December 3, 1998. Regardless, in the past when an error or change was identified, the Linear Assessor would be advised and the necessary changes would be made throughout the year.

Regarding the preparation of the linear assessments, self reporting was a component of the system, but an assessment could be prepared with the information from the previous year. In addition, the Linear Assessor was using the AEUB data as early as the 1980's. While incomplete reporting could cause problems and municipalities did have ongoing complaints regarding both missed assessments and changes throughout the year, the overriding objective of the Linear Assessor was always to maintain a correct assessment.

With regard to the Colt Engineering Ltd. audit of pipelines, it was also noted that this audit had many errors.

#### Communication

The Complainant stated the letter of transmittal dated December 3, 1998, and Handbook were not received until December 16, 1998. Further, the equipment listing was incomplete and, in fact, a usable and complete equipment listing was not received by the complainant until January 4, 1999.

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The Complainant contended that the Handbook and other material were not clear. The Complainant understood that the reporting was to be a full equipment audit, but did not fully understand what was to be reported. This was complicated by the fact that each item on the equipment listing was identified by a different number from past years and what had constituted flowlines in previous years were now pipelines.

### **Implementation**

Assessment notices issued on March 31, 1999, did not relate to the detailed equipment listing and no explanation was given as to what had been accepted in the way of changes, and what was not accepted.

### **Reporting**

The Complainant submitted that Talisman have 12,150 items on the detailed equipment listing to check. The changes to the reporting such as new identification number (PPI ID) and the change from flowlines to pipelines made it difficult to check within the time frame allotted. Further, the changes, specifically the use of the new PPI ID's, prevented circulating the listings to the field operators for their assistance in identifying changes.

The changes in reporting format resulted in a substantial amount of work in comparison to other years and the Complainant did advise the Linear Assessor of this problem. Despite hiring additional staff, the Complainant could not complete the work on time. Because of the additional amount of work required, and the short time period from the date a usable detailed equipment list was received, being January 20, 1999 to the reporting deadline of February 16, 1999, the Complainant focused on the equipment lists for well facilities. Only a portion of the pipeline PPI ID's were checked before the reporting deadline of February 16, 1999.

The Complainant emphasized that correct assessment is important to it's operation because any taxes generated by the assessment must be allocated to the owners of the linear property it operates.

### **Complaints**

Once the complaints were filed, there was confusion with respect to which complaints were subject to section 295(4) of the Act. The Complainant cited the example of a non producing well listed on the detailed equipment listing having no value, as are all items on the listing. The assessment notice for that well gave a value that is in error, but because there was no reporting specific to that well, the Linear Assessor invoked section 295(4) of the Act. In another example the Linear Assessor invoked section 295(4) of the Act, but when shown it was not their property, then the Linear Assessor advised the complaint was not subject to the section.

**Cross examination of Complainant's witnesses**

**Communication**

The Complainant's witness acknowledged that she had a number of conversations with the Linear Assessor in January, and was able to confer with the Department between December 14, when the department's request was received, and February 16, the last date for filing changes.

**Implementation**

The Complainant acknowledged the AEUB data could not solely be used to prepare pipeline assessments and that any assessment prepared from this data would not be 100% correct.

**Reporting**

The Complainant acknowledged that proper reporting ensures there is fairness and equity in the assessment of linear property and that regardless of the problems with incomplete listings, they do have a responsibility to audit the listings.

The Complainant acknowledged that the company is in the oil and gas business and that transferring pipelines and wells are business decisions.

**ISSUES**

**Jurisdictional Issues**

1. Are matters arising from section 295(1) of the Act within the Board's jurisdiction?
2. In respect of Wheatland County, should the complaints filed by Talisman be dismissed for not providing necessary information as requested pursuant to section 295(1) of the Act?
3. In respect of the MD of Greenview, should the complaints filed by Talisman be dismissed for not providing necessary information as requested pursuant to section 295(1) of the Act?
4. In respect of the MD of Wainwright, was the Linear Assessor's request for information, dated December 3, 1998, compatible with section 295(1) of the Act?
5. In respect of the MD of Wainwright, should the complaints filed by Talisman be dismissed for not providing necessary information as requested pursuant to section 295(1) of the Act?

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### Merit Issues

1. Wheatland: Should the line item be removed from Talisman's assessment and assigned to a third party?
2. MD of Greenview: (a) Should Amoco Petroleum be the Designated Operator for the listed line items?  
(b) Should Line Item PPI - ID 408572 be reduced to zero value?
3. MD of Wainwright: Should the line items be adjusted in value as requested by the Complainant?

### Costs

1. By invoking Section 295(4) to challenge the jurisdiction of the Board to hear and decide the complaints of Talisman, did the Linear Assessor cause harm to Talisman to warrant costs being ordered by the Board?

## PART 1

### JURISDICTION

#### Summary of Respondent's Legal Argument

The Respondent submitted that the Board does not have jurisdiction to hear complaints subject to section 295(4) of the Act. The section places a duty on the assessed person to provide the information requested by the assessor and in the event of failure to provide, no complaint is possible under section 488(1)(a) of the Act.

There is a duty on the assessor to prepare the assessments. There is also a duty on the assessed person to provide information to the assessor for the preparation of the assessment. Section 292 and 295 of the Act clearly state this duty. If an assessed person fails to provide the information then they no longer have the right to complain and the Board is obligated to decide that preliminary point.

Linear assessments affect the assessed person and every other ratepayer and the purpose of the legislation is to ensure a properly functioning and workable assessment scheme. Based on the clear wording of section 295 of the Act and the entire legislation relating to assessment, taxation and financial administration of municipalities, it is clear that:

- linear assessor has a duty to prepare annual linear assessments based on reports provided by the assessed person,

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- linear assessor requests and relies on information from the assessed person,
- assessed persons have a duty to respond,
- in the event of a non response, the linear assessor must prepare an assessment notice,
- linear property, unlike other property, cannot be inspected,
- copies of linear assessment notices are sent to the municipalities,
- municipalities must prepare annual operating and capital budgets based on projected revenue,
- municipalities must prepare annual tax notices, including taxes based on linear assessments,
- an assessed person has a limited statutory right to complain about an assessment of linear property,
- if the assessed person does not respond to a request for information, they have no right of complaint to the Board for that property for that year.
- the Board must conclude that it does not have jurisdiction to hear the complaint.

### Board's Jurisdiction

The Board is a creature of statute. The Board has no inherent jurisdiction to hear a matter; they are only entitled to act under powers given to them under the applicable legislation. This is supported by *Saskatchewan Ophthalmic Dispensers Assn. v. Lapoint* which found that a body cannot assume unto itself any additional inherent jurisdiction or powers than those specifically afforded to it by the Legislature. This position is also supported by *Anisimic Ltd. v. Foreign Comp. Commn.* There is no discretion granted to the Board to enlarge its jurisdiction.

The interpretation of section 295(4) of the Act is a preliminary matter to be determined prior to the right to exercise its jurisdiction. In *A Guide to Judicial Review, Kavanagh, John A., (1978)* it states there are certain legal and factual elements which must exist before any tribunal has jurisdiction to exercise power. In *Syndicat national des employes et. al. v. Union des employes des service*, the Supreme Court of Canada stated that any grant of jurisdiction will necessarily include limits to the jurisdiction granted and any grant of power remains subject to conditions and the only question which should be asked is whether the legislator intended the question to be within the jurisdiction conferred on the tribunal.

In this case, section 295(4) of the Act is an expressed limitation on the ability of the person to make a complaint and therefore is a limit on the power of the Board to hear a linear complaint. The expressed intention of the legislature is to exclude those persons from the statutory scheme of the assessment appeal process and limit the jurisdiction of the Board. The Board is only entitled to hear from those persons and on those matters that the Legislature clearly intended the Board to hear. While the Board has not been given the expressed jurisdiction to dismiss a complaint in sections 488 and 488.1, it is not relevant. The question of whether or not a board has jurisdiction to hear a matter is always an issue that must be determined before proceeding to hear a matter.

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### Interpretation of Taxing Statutes

The modern principle of statutory interpretation as expressed by E.A. Driedger in *Construction of Statutes* is that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and intention of Parliament. In addition, the Supreme Court of Canada, in *Quebec (Communaute urbaine) v. Corp. Notre-Dame de Bon-Secours* outlined the following principles:

- The interpretation of tax legislation should follow the ordinary rules of interpretation.
- A legislative provision should be given a strict or liberal interpretation depending upon the purpose underlying it, and that purpose must be identified in light of the context of the statute, its objective and the legislative intent: this is the teleological approach.
- The teleological approach will favour the taxpayer or the tax department depending solely on the legislative provision in question, and not on the existence of predetermined presumptions.
- Substance should be given precedence over form to the extent that this is consistent with the wording and the objective of the statute.
- Only a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer.

Section 295(4) of the Act appears in the legislation and it cannot be ignored. The plain meaning of the words is to restrict the right to complain and to restrict the right of the Board to hear the complaint. If the ordinary meaning of the words is not clear, then the Board is required to examine the context of the statute.

With regard to the plain meaning of the words, to restrict the right to complain, the following preliminary questions should be answered in the affirmative:

- was a request for information made?
- was the information necessary for the preparation of the assessment?
- did the person fail to provide the requested information by the appropriate time?

The answer to all of the above are in the affirmative.

The Legislature has given the right to complain in certain circumstances and has taken away the right to complain in certain circumstances. Section 295(4) clearly refers to a limitation of the right to complain, but only for the current year. If a person fails to report the information and feels the assessment is incorrect, that person may report for the purposes of the following year. In addition, even if a complaint to the Board is not available, the assessed person may make a case to the Courts for relief.

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There is no indication in section 295(4) of the Act that failure to provide the information must be intentional. The section merely uses the word “failed”. The effect is the same regardless of whether or not the failure was intentional, negligent, by oversight or other extenuating circumstances. The onus is upon the assessed person to ensure the information is reported and there is no obligation on the Assessor to follow up with further requests. It is a self reporting system.

Section 295(1) of the Act has a requirement to provide the information requested. There is no specification in the section as to how the information must be requested. The assessor is permitted to request information necessary to prepare an assessment or to determine if a property is to be assessed. Blacks Law Dictionary defines necessary, in part as “This word must be considered in the connection in which it is used” and be “appropriate, suitable, proper, or conducive to the end sought.”

The assessor has the responsibility to ensure each assessment reflects the valuation standards for, and the specifications and characteristics of, linear property as of October 31 in the year prior to the year in which the tax is imposed. Section 292(3) of the Act provides that each assessment must be based on a report provided by December 31, to the Minister. The Minister has identified the request for information and the information necessary under Ministerial Order No.: L:536/98. The legislation contemplates that it is necessary that there will be reporting as it is necessary for the preparation of the linear assessment.

The Respondent submitted that in the review of the plain meaning of the words of the statute, the Board must examine the section in the context of the statute, its objectives and legislative intent. Substance must be give precedence over form. When section 295(4) is viewed in the context of the Act, particularly Parts 8 through 12, inclusive and against the background of the scheme of the Act, it is clear that the Legislature intended:

- that linear assessments be prepared based on information provided by the assessed persons,
- assessments be prepared in a timely fashion,
- linear assessment notices are to be relied upon by municipalities concerning budgets and financial forecasts,
- assessed persons are required to respond to requests for information on assessments, and
- appeal to the Board, for those persons who failed to comply with the assessment reporting process, is denied.

The Respondent submitted that the intention of the Legislature must be gathered from the words of the Act and read in context which must be construed in light of the facts known to the Legislature when the Act was passed. This would include an examination of the “mischief to be remedied” and the circumstances surrounding the enactment. This examination can be based on the social context of the legislation, or it can also be based on the intellectual context of the legislation. In Driedger at page 151 it states, in part, “All facts that are needed to understand the



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subject matter of a statute may be considered by the court....A court must take into account any general public knowledge of which the court would take judicial notice, and may in a proper case be required to be informed by evidence. And it must be assumed that all the knowledge and information required for a proper understanding of a statute was possessed by Parliament....”

In regard to the context of the legislation, it has been recently noted by the Alberta Court of Appeal that the linear assessment system is a self reporting system and the assessed person is responsible for the correctness of the information. In *Amoco Canada Petroleum v. Alberta*, the Court was concerned with whether or not the Minister was entitled to extend the deadline for the issuance of assessment notices due to the number of errors discovered in the process. The entire scheme of the linear assessment process depends on the timely reporting of necessary information by the assessed person.

The Respondent submitted that a review of the applicable sections shows there is a statutory duty for an assessor to prepare the linear assessment that reflects the valuation standards and the specifications and characteristics of the linear property as of October 31. The assessment is based on a report provided to the Minister by December 31 by the operator of the linear property, but in this case the date for reporting was extended to February 15, 1999, by Ministerial Order. The legislation contemplates that it is necessary that the assessed person report upon request. Even if the assessed person fails to report, the assessor is still required to prepare an assessment.

The Respondent submitted that the assessor has a duty to prepare assessment notices for all linear property, send the notice to the assessed persons, and send a copy to the municipalities. The municipalities then record on the municipal assessment roll the information on the assessment notice and prepare, annually, a tax roll. The municipality is thereafter required to prepare tax notices and send the tax notices to the assessed persons before the end of the year. Each municipality must pass both an operating and capital budget for each year. An operating budget must include an estimate of expenditures in addition to an estimate of sources of revenue and transfers, including property tax. The municipality must also pass a property tax bylaw which authorizes the imposing of taxes to pay for the expenditures and transfers set out in the budget. It is clear that the assessor, municipalities and all assessed persons rely on the accuracy, timeliness and completeness of the linear assessment notices.

The Respondent suggested that this situation is analogous to the Board having no jurisdiction to hear an appeal that has been filed after the statutory time limits. In *Edmonton v. Alta. Assess. App. Board*, the court examined a decision of that Board when it undertook a hearing of an appeal without consideration as to whether or not the original appeal to the Court of Revision had been made on time. The court clearly recognized that failure to file a complaint in time denied the Court of Revision and the Alberta Assessment Appeal Board the jurisdiction to hear the merits of the complaint. The Respondent submitted that the denial of an appeal right for failure to report is not any different than the use of statutory time to appeal.

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The Respondent argued that this situation, from a legislative intent or policy perspective, is not unlike the Legislature setting time limits for the recovery of money paid to the municipality. The Act provides that an action for the return of money paid to the municipality for payment of taxes must be started within six months after the payment of the money. This provision was considered by the Court in *Telus Communications v. Opportunity (M.D.)* in which the Court concluded that the recovery of tax monies was barred by the limitation period.

In addition, the Respondent submitted, depriving an individual the right of appeal for failure to provide requested information is found in other jurisdictions. In *Nova Scotia (Director of Assessment) v. Springwell Properties Ltd.* the case before the Court was whether or not the board had jurisdiction under the Act to prevent a person from appealing their assessment when that person had omitted to provide a response. The Court determined that the board had jurisdiction and returned the matter back to the board.

The Respondent argued that it is clear the assessor made a proper request for information from the Complainant in accordance with sections 292 and 295 of the Act. On December 3, 1998, the Director of Linear Property Assessment sent letters and a package of information, which included the Well and Pipeline Reporting Procedures Handbook, to the assessed persons requesting certain information for the purpose of preparing the linear assessments. The letter and Handbook were clear on the following points:

- the package was a formal request for information under sections 292(3) and 295(1) of the Act;
- the assessed person was required to provide the information requested by the Handbook;
- there would be no further request for information;
- the information had to be received by the Linear Assessor on or before 4:30 p.m. on February 15, 1999;
- if information was not provided as requested, the assessed person loses the right to appeal the assessment;
- the Linear Assessor will take steps to enforce section 295(4) of the Act, and
- there is a set process by which the information must be provided.

The Respondent made the following points: a reminder letter to the Complainant was sent on January 12, 1999, the Handbook is in similar format to previous years, the Linear Assessor held seminars on the appropriate method of reporting and that two representatives of the Complainant had attended a seminar.

It was submitted that the legislation should be read in the context of the mischief to be remedied. It is clear the section is meant to address an ongoing problem in the self reporting assessment scheme. In 1996, municipalities raised concerns that certain property was missing from the linear assessments and an audit resulted in added assessments in those municipalities. In the past, a

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large number of assessed persons would fail to report which resulted in a failure to assess or an inaccurate assessment. The Linear Assessor would then be approached to issue amended assessment notices which resulted in numerous municipalities expressing concern about the considerable number of amended assessment notices and substantial number of adjustments made by the Board a long time after the original assessment notices had been relied upon by the municipalities for their assessment roll.

The Respondent concluded by stating it is clear from the plain meaning of the words, as interpreted in the context of the legislation and in accordance with the intention of the Legislature, that a person has no right to complain to the Board if they fail to provide the necessary information requested by the assessor. Accordingly, based on the facts set out above, the Complainant does not have the right to complain on those items to which no reply had been given and the Board does not have the jurisdiction to hear the complaint.

The Respondent submitted that the Complainant failed to provide the information properly requested and more particularly, with respect to the Municipal District of Greenview assessments, the Linear Assessor received a partially marked up detail listing on February 16, 1999, however the line items currently under complaint were not corrected or adjusted. The Linear Assessor did not receive any reporting before or after February 16, 1999, relating to the Municipal District of Wheatland or Municipal District of Wainwright.

### **Summary of Complainant's Legal Argument**

The Complaint submitted that section 295 of the Act was amended by the Municipal Government Amendment Act (Bill 34). Bill 34, for the most part, was developed through a consultation process which included municipal governments and stakeholders. The addition of section 295(4) of the Act was not part of the consultation process and has the appearance of a eleventh hour addition to Bill 34. Debate in the Legislature focused only on the mischief that could be caused through the potential abuse by an assessor and the alleged loss of the right of appeal.

Historically, the assessment of linear property involved a consultative process. In mid November, the Linear Assessor supplied to the holders of linear property with a listings of properties to be assessed. From the listings a linear property holder could make corrections, additions or deletions. The Linear Assessor would use the listings as the basis for compiling Assessment Detail Sheets from which assessment notices would be prepared and sent to municipalities and linear property holders. Municipalities would then issue tax notices to the linear property holders. Linear property holders would have the right to complain against the assessment. The majority of complaints never proceeded to a full hearing as most complaints would be resolved through an informal cooperative process.

For the 1995 assessment year, the Linear Assessor met with the Complainant and through mutual review of individual pipelines, were able to make a joint recommendation to the Board to correct

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the linear property records. For the 1997 assessment year, they were also able to resolve and agree upon all linear complaints with the exception of one pipeline which proceeded to a hearing before the Board. The informal process would at times involve a promise by the Linear Assessor that the errors would be corrected in the following year. In the 1997 assessment year, the Linear Assessor promised that an error in the Municipal District of Kneehill would be updated in the 1998 assessment. This was not done.

The Linear Assessor represented to the industry at a Linear Changeover Meeting on October 21, 1998, that no changes to the Linear Assessor's data base would be implemented for the 1999 tax year and that the primary source of information for linear assessment, for the tax year 2000 would be the AEUB data.

The Complainant received the listings on December 14, 1998 and each well, wellsite and pipeline received an PPI ID number, which is the historical identifier for assessment purposes. The Complainant's listings included 4,331 lines of pipe and 7,819 well and wellsites for a total of 12,150 PPI ID's. The listings were badly flawed and difficult to comprehend. They were in a different format from that of previous years, they were not sorted by location, contained no well name and no page breaks between municipalities. The unique well identifier names contained no spacing or other separation, making them difficult to read. On the listings for wells, it appeared that at the end of pages a wellsite would be listed, however the accompanying well would not be displayed on the next page or anywhere in the listings.

On December 18, 1998, the Complainant received, at their request, the listing in electronic form, but the listing did not contain a municipality field, making the listing impossible to work with. The Complainant requested a new electronic file, but this was not received until January 4, 1999.

The Complainant reviewed and responded to the section 292 and alleged section 295 request in the most expeditious manner possible, given the incomplete and difficult listings, the enormity and vagueness of the request and short time frame to respond. This included giving information in both the Municipal District of Greenview and in the Municipal District of Wainwright in the form of special operator declarations. In Wheatland County, the Complainant had no need to supply information as no December listing was received for that County.

The Assessment Detail Reports were received by the Complainant on April 2, 1999, but did not contain certain corrections or dispositions which the Complainant had forwarded to the Linear Assessor on or before February 16, 1999. In addition, PPI ID's which did not appear in the December listing appeared on the Detail sheets. The amounts set out in the Assessment Notices, which accompanied the Detail sheets, did not correlate with the sheets. In the Municipal District of Greenview the Assessment Detailed Reports - Well, totaled \$8,851,020 while the Assessment Notice set out a total of \$8,849,930. In the Municipal District of Wainwright the Assessment Notice set out an amount of \$40,703,960 while the Detail sheets show \$40,745,850.

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The Linear Assessor's position on section 295 of the Act is that all information received after February 15, 1999, (later changed to February 16) would be put into a "box" and not considered. The Linear Assessor has refused to consider any meritorious complaint by the Complainant, however, the Linear Assessor has considered errors in the assessment that have been brought to their attention after February 16, 1999, if the correction works in favour of the municipality. A correction in Wheatland County was made by a telephone call initiated by a linear property holder on June 10, 1999, but the Linear Assessor has refused to correct an obvious error in the Complainant's linear assessment in the Village of Chauvin which would have resulted in a reduction in assessment.

The Linear Assessor has refused or failed to give a coherent explanation as to its guidelines in determining whether a complaint should be subject to section 295(4) of the Act. For the purpose of this hearing, the Complainant selected the Municipal District of Greenview and Wheatland County as two municipalities to bring forward and the Linear Assessor selected the Municipal District of Wainwright. The Linear Assessor supplied to the Complainant a revised listing of section 295(4) objections on October 18, 1999. Apparently, the Linear Assessor once again reassessed its criteria for section 295(4) of the Act, as the Complainant has received notice that the Linear Assessor no longer is classifying the Complainant's complaint in Wheatland County as a section 295(4) issue. Likewise, of the 13 PPI ID's which the Complainant brought forward in the Municipal District of Greenview, the Linear Assessor now advises that 12 are no longer subject to the 295(4) issue.

The Complainant argued that the Linear Assessor is seeking a remedy which is effectively a punitive provision in the Act. The amount of tax dollars at stake can often exceed any reasonable fine imposed in any punitive provision of the provincial statute. Where provincial statute set out a punitive remedy, the body intending to impose the punitive obligation must comply strictly with the requirements set out in the legislation in order to enforce the penalty.

To determine whether or not the Linear Assessor has complied with its obligations, one must examine initially each of the requirements under section 295(1) of the Act. It is clear that the request for information under section 295(1) of the Act must be made by the assessor. It ensures that confidential information is not turned over to persons who are not bound by the ethical obligations of an assessor. The package of forms sent on December 3, 1998, asked that the information be sent to "pipeline assessment unit" and is signed by Jerry Husar, A.M.A.A., Director of Linear Property Assessment. There is no indication made that the request is made by the Assessor designated by the Minister.

The minimum requirement for clarification and for entitlement to the sanction would be to ensure the information is clearly being requested by the assessor designated by the Minister, not the person who may be his Director or colleague. The document provided by the Crown appears to indicate that for the 1999 taxation year, the assessor designated by the Minister is Mr. Pickering, who then delegated that designation on December 9, 1998, to Mr. Husar.

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The next question to answer is what “information” was so necessary in the preparation of the assessment that the Linear Assessor has invoked section 295(4) of the Act. Rather than set out specifically what information is being requested by the December 3, 1998, letter and Handbook, the Linear Assessor sent a letter saying “This is a formal request for linear property information from your company. Clearly this type of letter is too vague as the letter does not set out which information is even necessary for the assessor to complete his assessment. Rather, it includes the generic description of “this package contains a number of reports and forms designed to assist you with proper reporting of information.” Is the Linear Assessor implying that every form and blank and clause is information necessary? There is no way an assessee can determine what information is necessary when it is not directly set out. What is clear is that the Linear Assessor has sent out a package of forms and reports “designed to assist you with proper reporting of information”. How can such a vague request support such a specific remedy of denial of a right of complaint?

With respect to whom the request was sent, the Respondent sent the package of information to the attention “Assessee/agent” and addressed the letter to “Dear Sir/Madam”. What person is then held accountable to this punitive provision and to which person was the Linear Assessor addressing his request? In order for the Linear Assessor to succeed on section 295(4) of the Act, he must establish that the element of non compliance and a “to whom it may concern” letter cannot suffice for the enforcement of section 295(4) of the Act. What was done was a vague request for some information addressed to an unnamed person with no follow up, signed by a person who does not indicate his designation or authority to even make the request. *In Nova Scotia (Director of Assessment) v. Springwell Properties Ltd.* the Regional Assessment Court found that though there was prima facie evidence the request was sent and received, the Director of Assessment had not established the request was received by the Appellant and set the matter for hearing.

The Complainant argued that it is clear that only information requested by the assessor under section 295(1) of the Act, triggers a remedy or application of section 295(4) of the Act. The Linear Assessor has tried to transform the statutory obligation for a report to the Minister required under section 292 of the Act into the category of information requested by an assessor under section 295 of the Act. Unless there is a designation otherwise, the Minister under section 292(1) of the Act is not the designated assessor. Clearly the statutory scheme sets out two separate reporting requirements on the part of a linear operator.

If the legislature intended to make the obligation for reporting under section 292 of the Act the same as the obligation under section 295 of the Act, they clearly would have indicated such a significant and radical departure from previous years. The Linear Assessor is asking that the report due the Minister is the same as the request made by an assessor. Those words do not exist in the Act, no matter how much desire the Linear Assessor has to make the reporting obligation fall into the category of “information required”.

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The Complainant submitted that under section 292(4) of the Act, the assessor's obligation on a failure to report is to consider alternative sources, in order to prepare an assessment. This section, as had section 295, existed since the inception of the Act. The addition of subsection (4) to section 295 of the Act does not make the two sections become one, nor change the nature, purpose and intent of the legislation and scheme. Not only does this demonstrate the difficulties which arise when provisions are "patched" on to existing schemes, but it also reinforces the plain interpretation of both sections and leads to the conclusion that section 295(4) is designed to provide for the request of specific information, requested specifically of a company by the assessor as necessary for the preparation of an assessment. It does not cover the generic mailing of reports due to the Minister on an annual basis.

The Complainant reference *R. v. Jon H. Petursson* in which a similar two part obligation existed on a taxpayer, one to respond to a notice for a specific request for information under section 64(1) and the requirement to provide information to the Minister under section 76(1) of the Alberta Corporate Income Tax Act. The Appellant failed to respond to a demand under section 64(1) and was then charged with contravention of section 76(1)(b) which made it an offense to fail to "provide or produce information or documents as and when required by this Act". The Court stated as follows:

"The contrast between the language used in s. 64(1) with that of s.36(1) and (2) is striking. The last mentioned subsections command a corporation to do certain things. For example, under s. 36(2) a corporation is required, by the express terms of the subsection, to file within the time stipulated in the demand letter. The section goes much further than merely authorizing a demand letter. The legislature could have used similar language in s. 64(1) but it chose not to do so.

...The result of a person not complying with an order issued under s. 64(2) would then surely be a failure to produce "when required by the Act" - not merely in accordance with the s. 64(1) notice. The legislature's intent it distinguish between a requirement under the notice and a requirement under the Act is demonstrated by s. 64(2) which allows a court application if the recipient of the notice "does not provide or produce...in accordance with the notice.

To read s. 64(1) in isolation and without regard to s. 64(2) in the circumstances of this case, in our view, runs contrary to the scheme or framework of the Act and such a result should be avoided."

The court further considered a similar case, and made a similar finding in *R. v. O'Donnell*, a case under the Federal Income Tax Act".

The Complainant argued that for section 292 of the Act to become the requisite request under section 295 of the Act, the legislation now had to state so clearly. Failing that, only an extreme

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interpretation of section 292 could accomplish this end. The Act does not state that a person cannot complain if he does not provide his report to the Minister or respond to the Minister's request. The Complainant did not take issue with the plain meaning principles set out in *Notre Dame de Bon Secour v. Quebec (Communité Urbaine) et. al.*, but submitted that there are equally important principles at common law requiring strict interpretation of penal provisions, particularly when there is more than one interpretation. The Complainant referenced *Regina v. Philips Electronic Ltd.* where the Court made reference to the strict compliance principle for penal provisions discussed in Maxwell on the *Interpretation of Statutes* that "If the language of the statute is equivocal and there are two reasonable meanings of that language, the interpretation which will avoid the penalty is to be adopted.

The Complainant submitted, with regard to "necessary", that the Respondent failed to establish that the information was necessary in the preparation of the an assessment. The Linear Assessor had been able to prepare linear assessments in the previous years. The request for a report is not a request for information to enable them to prepare an assessment, but a request to audit the accuracy of the information currently in their possession. The vagueness of the request and the failure to specify which particular information was necessary in addition to the normal auditing procedure underlines the real importance of a proper application of the interpretation of section 295(1) of the Act.

Section 295 of the Act was brought in to assist assessors in the conversion to a market valuation system and the requirement for income evidence in the valuation of commercial property. This information is generally confidential, but necessary to the preparation of assessments. It has no bearing whatsoever to linear property unless there is some unique aspect of information the Linear Assessor cannot obtain.

All of the information requested can be obtained through public information sources i.e. AEUB. The Complainant referenced *Hansard*, and submitted that, in passing the legislation, the only people speaking on the particular Bill were concerned with the very type of abuse that the Linear Assessor is now engaging.

The Complainant, speaking to whether or not the information is necessary, referenced *Langdon v. Traders Financial Corp. Ltd.* in which the Court found that in the absence of any judicial interpretation to the contrary, reference is to standard dictionaries. The Linear Assessor failed to recognize the distinction between information that is the foundation or basis for any assessment and the auditing of a list to ensure an accurate detail list. Necessary does not mean simply convenient, efficient or practicable. Presumably, if the preparation of the Ministry's report was the information necessary, then there would be a body of case law surrounding the notion of failure to comply with section 295(4) of the Act requests and the application on the part of the assessor to the Court of Queen's Bench to enable him to make an assessment.



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With respect to the assessor's obligation under the Act, the Complainant submitted that the predominant requirements are for the assessor to produce an accurate and fair assessment. These long standing principles have been recognized as essential since the inception of ad valorem taxation. The mere addition of subsection (4) to section 295 of the Act cannot alter, amend or override the fundamental principles of the assessment system. Even if one is capable of determining what is "necessary" in the reporting requirements, when the assessor has the ability to obtain the public information or is advised the assessment is incorrect, he still has a statutory and ethical obligation to correct the assessment. In support of this position, the Complainant referenced *Royal Montreal Golf Club v. Dorval* and *Re: Bayack*, that an assessor has a duty to correct an assessment that is error.

The Complainant submitted that there are situations where the proper application of section 295(4) of the Act would apply, but to interpret the section to apply to the linear report due the Minister is to read more into the section than was reasonable or clearly intended. In support of this position the Complainant referenced *R.A.C. v. Nesse Holdings* on the requirement for clear express language in the truncation of a taxpayers rights. The assessor's package of reports as a "request" for necessary information must be considered in light of the entire scheme of linear property assessments.

The Complainant submitted that an element of common sense must be applied in the consideration of infractions denying a complaint and referenced *Regina (City) v. Newell Smelski Ltd.* concerning an alleged missing of a time limitation for sending a notice of appeal.

The Complainant argued the impossibility of applying a section 295(4) application to the entire pipeline report is underscored by the nature of linear assessments. The assessment is sent out as a bulk number for a municipality, with hundreds of lines of detail sheets accompanying the assessment. The Linear Assessor allows complaints on the merits where information was received or the error was their own. How can he prevent a complaint against the assessment from proceeding if the assessment is already conceded as validly under appeal on some grounds but not on others? If a valid complaint exists on as assessment, the assessment in its entirety is under review and falls under the jurisdiction of the Board which has an obligation to correct the assessment. A partial application of section 295(4) to the detail listings does not apply to a complaint against the assessment in its entirety.

The Complainant concluded by stating that the Linear Assessor has failed to establish that the request for the Complainant to return its report to the Minister pursuant to section 292 of the Act constitutes a valid request for information pursuant to section 295 of the Act. In addition, the Linear Assessor failed to establish that the information was necessary for the preparation of an assessment. In the alternative, the Complainant requested that even if the Board could find that some information was necessary, the assessor has an obligation to correct the roll and the Board can order the correction of the assessment.

## **FINDINGS RESPECTING JURISDICTION**

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 hereto, the Board finds as follows:

1. The Board has jurisdiction to hear matters arising from section 295(1) of the Act.

## **DECISION**

The Board will hear evidence and argument arising from section 295(1) of the Act to determine whether the complaints filed by Talisman for linear property in the MD. Of Greenview, the MD of Wainwright and Wheatland County are properly before the Board

## **REASONS**

The Board agrees with the Respondent that the Board is a creature of statute and jurisdiction is limited to that granted under the Statutes of Alberta. This being so, care must be taken to ensure that decisions of the Board are limited to matters specifically within the jurisdiction of the Board. The Respondent argued that while the Board must address issues arising from section 295(1) of the Act as a preliminary matter to hearing the merits of a complaint, the Board may not address the circumstances giving rise to a loss of the right to complain. In order to determine the extent of its jurisdiction, the Board looked to the scheme of the legislation.

The Board has jurisdiction to hear complaints about the assessment of linear property pursuant to section 488(1)(a) of the Act. Pursuant to section 492 of the Act, a complaint in respect of a linear property assessment may be about the description, address of an assessed person, an assessment, type of improvement, school support, whether it is assessable or exempt from taxation. Section 488(2) of the Act, further directs that upon receiving a complaint, the Board must hold a hearing.

Section 295(1) of the Act states that a person must provide, on request by the assessor, any information necessary to prepare an assessment or determine if the property is to be assessed and failing to provide the information, subsection (4) states no person may make a complaint.

The Board interprets the scheme of the legislation to mean that the Board can determine its jurisdiction under section 488 of the Act and, if necessary, must consider section 295(1) in order to determine that jurisdiction. It is the Board not the assessor, which can determine, upon consideration of the circumstances surrounding a request by the assessor pursuant to section 295(1) of the Act, if it lacks jurisdiction pursuant to section 295(4). Accordingly, all matters and circumstances arising from section 295(1) of the Act must be considered by the Board in order to determine the validity of a complaint under section 488 of the Act.

**PART 2**

**MERIT**

The Board, having determined it has jurisdiction to hear matters arising from section 295(1) of the Act now turns to the evidence and argument relating to the merits of the complaints.

**Summary of the Complainant's Argument**

To reiterate, the Complaint submitted that section 295 of the Act was amended by the Municipal Government Amendment Act (Bill 34). Bill 34, for the most part, was developed through a consultation process which included municipal governments and stakeholders. The addition of section 295(4) of the Act was not part of the consultation process and has the appearance of a eleventh hour addition to Bill 34. Debate in the Legislature focused only on the mischief that could be caused through the potential abuse by an Assessor and the alleged loss of the right of appeal.

Historically, the assessment of linear property involved a consultative process. In mid November the Linear Assessor supplied to the holders of linear property a listings of properties to be assessed. From the listings a linear property holder could make corrections, additions or deletions. The Linear Assessor would use the listings as the basis for compiling Assessment Detail Sheets from which assessment notices would be prepared and sent to municipalities and linear property holders. Municipalities would then issue tax notices to the linear property holders. Linear property holders would have the right to complain against the assessment. The majority of complaints never proceeded to a full hearing as most complaints would be resolved through an informal cooperative process.

For the 1995 assessment year, the Linear Assessor met with the Complainant and through mutual review of individual linear property pipelines, were able to make a joint recommendation to the Board to correct the linear property records. For the 1997 assessment year, they were also able to resolve and agree upon all linear complaints with the exception of one pipeline which proceeded to a hearing before the Board. The informal process would at times involve a promise by the Linear Assessor that the errors would be corrected in the following year. In the 1997 assessment year, the Linear Assessor promised that an error in the Municipal District of Kneehill would be updated in the 1998 assessment. This was not done.

The Linear Assessor represented to the industry at a Linear Changeover Meeting on October 21, 1998, that no changes to the Linear Assessor's data base would be implemented for the 1999 tax year and that the primary source of information for linear assessment, for the tax year 2000 would be the AEUB data.

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The Complainant received the listings on December 14, 1998 and each well, wellsite and pipeline received a new PPI ID number. The Complainant's listings included 4,331 lines of pipe and 7,819 well and wellsites for a total of 12,150 PPI ID's. The listings were badly flawed and difficult to comprehend. They were in a different format than in previous years, they were not sorted by location, contained no well name and no page breaks between municipalities. The linear property was not sorted by geographical location so that it was impossible to, for example, look at one township and see all the facilities. This made it difficult to relate the equipment listing to the assessment notices from previous years. For the specific location of each linear property there were no spaces between the quarter section, section, township, range and meridian which made it difficult to identify each property. In addition, each page of the detailed equipment listing was incomplete as the last item was missing.

On December 18, 1998, the Complainant received, at their request, the listing in electronic form, but the listing did not contain a municipality field, making the listing impossible to work with. The Complainant requested a new electronic file, but this was not received until January 4, 1999.

The Complainant reviewed and responded to the section 292 and alleged section 295 request in the most expeditious manner possible, given the incomplete and difficult listings, the enormity and vagueness of the request and short time frame to respond. This included giving information in both the Municipal District of Greenview and in the Municipal District of Wainwright in the form of special operator declarations. In Wheatland County, the Complainant had no need to supply information as no December listing was received for that County.

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The Linear Assessor's position in respect of section 295 of the Act is that all information received after February 15, 1999, (later February 16) would be put into a "box" and not considered. The Linear Assessor refused to consider any meritorious complaint by the Complainant. However, the Linear Assessor did consider errors in the assessment that have been brought to their attention after February 16, 1999, if the correction works in favour of the municipality. A correction in Wheatland County was made by a telephone call initiated by a linear property holder on June 10, 1999, but the Linear Assessor refused to correct an obvious error which would have resulted in a reduction in the Complainant's linear assessment in the Village of Chauvin.

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### **Specifics of Complaints**

#### Wheatland County

Talisman filed a complaint for PPI ID # 396278 located in Wheatland County.

In November of 1997, Talisman received the line pipe detailed equipment listings for the 1998 tax year.

PPI ID # 396278 had been taken over by Barrington Petroleum.

A Declaration of Special Operator dated December 22, 1997 was executed by Barrington Petroleum and forwarded to the Department.

The assessment summary prepared by the Department for the 1998 taxation year indicated Talisman no longer had any linear properties in Wheatland County.

The work equipment listing under letter of December 3, 1998 received by Talisman on December 14, 1998, for the 1998 assessment year contained no listing for Talisman in Wheatland County.

The pipeline does appear on the Accumap Pipe Card as approval number 27921 in the name of Husky Oil Operations Limited. Accumap is a commercial information service that provides data derived from AEUB records to subscribers.

The Department changed the assessment records and added this PPI-ID as a line item to the assessment notice.

Talisman requests that PPI ID # 39678 be removed from the Assessment Detail Report and the assessment derived therefrom in Wheatland County be reduced to nil.

#### Municipal District of Greenview

Talisman filed complaints for the following PPI ID Numbers in the Municipal District of Greenview.

PPI ID's 321133, 321132, 323625 and 323626

The Department had advised industry to prepare Declarations of Special Operator forms on or before February 15, 1999 for application to the 1998 assessment for the 1999 tax year. Further, Declarations of Special Operator were not required for flowline as the Department advised flow line would be transferred automatically with the Declaration of Special Operator for the associated well.

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Respecting line pipe PPI ID's 32113, 321132, 32365 and 323625 and 323626 Amoco Canada Petroleum Company executed a Declaration of Special Operator for Linepipe dated February 11, 1999.

PPI ID 408572

Respecting PPI ID 408572 this is a flowline from a non-producing well located at LSD 13-18-60-17 W5M.

The Handbook, at page 2, says the following about well production and flowlines:

“Additional depreciation will be given to oil wells that produce less than 477m<sup>3</sup> annually, gas wells that produce less than 507m<sup>3</sup> annually, injection/disposal or water wells that produce less than 720 hours annually and to shallow gas wells. These will be reflected on your assessment mailed in March. This information will be extracted from AEUB records. You are not required to report production information to us.”

And further:

“Assessed values for pipeline will appear on the November listing. Assessed values for flowlines are subject to change if the well status is updated. These changes will appear on your assessment mailed in March.”

The Department has accepted the obligation to establish production from the well located at LSD 13-18-60-17 W5M.and therefore knew of the well status as non-producing prior to February 15, 1999.

Talisman requests the assessment on PPI ID 408572 be reduced to nil to reflect its non operational status on October 31, 1998.

Municipal District of Wainwright

Talisman filed complaints for approximately 386 PPI ID's in the MD of Wainwright. By agreement with the Department this hearing will deal with PPI ID's listed in the merit section. Talisman reserves the right to bring the remaining PPI ID's in the MD of Wainwright before the Board at a future date.

Talisman withdraws its appeals on PPI ID's 8366, 8551, 8569, 8670, 15656, 15829, 15789, 15791, 15794 and 15837.

Talisman requests that the assessments appealed in the MD of Wainwright be corrected by the Department in accordance with the merits of this appeal.

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### **Summary of Respondent's Argument**

To reiterate, the Respondent submitted that it is clear the assessor made a proper request for information from the Complainant in accordance with sections 292 and 295 of the Act. On December 3, 1998, the Director of Linear Property Assessment sent letters and a package of information, which included the Well and Pipeline Reporting Procedures Handbook, to the assessed persons requesting certain information for the purpose of preparing the linear assessments. The letter and Handbook were clear on the following points:

- the package was a formal request for information under sections 292(3) and 295(1) of the Act;
- the assessed person was required to provide the information requested by the Handbook;
- there would be no further request for information;
- the information had to be received by the Linear Assessor on or before 4:30 p.m. on February 15, 1999;
- if information was not provided as requested, the assessed person loses his right to appeal the assessment;
- the Linear Assessor will take steps to enforce section 295(4) of the Act, and
- there is a set process by which the information must be provided.

The Respondent also submitted that a reminder letter to the Complainant was sent on January 12, 1999, the Handbook is in similar format to previous years, the Linear Assessor had held seminars on the appropriate method of reporting and that two representatives of the Complainant had attended a seminar.

It was submitted that the legislation should be read in the context of the mischief to be remedied. It is clear the section is meant to address an ongoing problem in the self reporting assessment scheme. In 1996, municipalities raised concerns that certain property was missing from the linear assessments and an audit resulted in added assessments in those municipalities. In the past, a large number of assessed persons would fail to report which resulted in a failure to assess or an inaccurate assessment. The Linear Assessor would then be approached to issue amended assessment notices which resulted in numerous municipalities expressing concern about considerable amended assessment notices and adjustments made by the Board a long time after the original assessment notices had been relied upon by the municipalities for their assessment roll.

The Respondent concluded by stating it is clear from the plain meaning of the words, as interpreted in the context of the legislation and in accordance with the intention of the Legislature, that a person has no right to complain to the Board if they fail to provide the necessary information requested by the assessor. Accordingly, based on the facts set out above, the Complainant does not have the right to complain on those items to which no reply had been given and the Board does not have the jurisdiction to hear the complaint.

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The Respondent submitted that the Complainant failed to provide the information properly requested and more particularly, with respect to the Municipal District of Greenview assessments, the Linear Assessor received a partially marked up detail equipment listing on February 16, 1999, however the line items currently under complaint were not identified for a change. The Linear Assessor did not receive any reporting before or after February 16, 1999, relating to the Municipal District of Wheatland or Municipal District of Wainwright.

### **Specifics of Complaints**

#### Wheatland County

Initially the Respondent claimed that this complaint should not be considered by the Board since the Complainant had failed to respond to the request for information and therefore this is not a valid complaint under section 295(4). During the course of the hearing the Respondent conceded that there had not been a request for information and withdrew the objection under section 295(4) of the Act.

#### Municipal District of Greenview

Initially the Respondent argued that these complaints are invalid since the Complainant did not properly respond to the request for information under section 295(1) as sent out by the linear Assessor by letter dated December 3, 1998. Subsequently the Respondent conceded that the Complainant had responded to the December 3, 1998 request.

The Respondent also stated that the changes requested by the Complainant are proper.

#### Municipal District of Wainwright

The Board does not have jurisdiction to hear these complaints since Talisman was requested under section 295(1) of the Act to provide to the Linear Assessor information necessary to prepare the assessment under 292 of the Act. Talisman failed to report and therefore section 295(4) of the Act denies Talisman the opportunity to file a complaint.

The Respondent also stated that if the Board determined that these complaints are not subject to section 295(4) of the Act, the changes requested by the Complainant are proper.



## **PART 3**

### **COSTS**

#### **Summary of Complainant's Position**

The Board has jurisdiction to allocate cost to parties. The Linear Assessor developed policies in response to complaints. The application of 295(4) criteria evolved during the preparation of this assessment from an undefined status to constant change. The Linear Assessor delayed the processing of complaints while he developed a policy. Even in the matters before the Board, the Linear Assessor changed his position on Greenview and Wheatland at the last moment, resulting in changes to the briefs. Cost should be assessed against the Linear Assessor to reflect the failure of the Linear Assessor to define a definitive policy on section 295 of the Act and the changes need to adapt to the new position respecting Greenview and Wheatland in the amount of \$1,000 for each municipality.

In support of this position, the Complainant referenced *Magna Appraisals vs. City of Calgary* which is analogous to this issue where the City of Calgary challenged an agent's authority to act on behalf of the property owner, but later found proper authorization had been filed.

#### **Summary of Respondent's Position**

The Respondent submitted that section 295(4) of the Act is new and is being implemented for the first time which can be wrought with growing pains. The Linear Assessor made his best effort in applying section 295(4) of the Act and no abuse of the process was intended. In fact, both parties contributed to the need for a hearing in that the Complainant did not report as requested and the Respondent needed time to develop and implement a policy on section 295 of the Act.

As for the retraction of the Linear Assessor's position in respect of Wheatland and Greenview, the preparation time of the Complainant was not impacted.

### **FINDINGS**

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 hereto, the Board finds as follows:

#### **Wheatland County**

1. The Complainant does not own the property under complaint

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**Municipal District of Greenview**

1. The Complainant does not own eleven of the linear properties under complaint.
2. The flowline is from a non producing well.

**Municipal District of Wainwright**

1. The Linear Assessor's request dated December 3, 1998, is incompatible with section 295(1) of the Act.
2. In accordance with the December 3, 1998, request of the Linear Assessor, Talisman reported for the linear property under complaint.
3. With the exception of the complaints withdrawn by Talisman, the line items under complaint are in error.

**Costs**

1. Costs are not warranted as a result of the lodging of the complaints by Talisman and the 295(4) challenge of the Linear Assessor.

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**

**Merit**

The Board orders changes to the 1999 Linear Assessment for Talisman as follows:

**For the MD of Wainwright**

<u>PPI-ID Number</u>	<u>Change Assessed Value (\$)</u>
8311	from 15,030 to 10,520
8318	from 9,800 to 420
8321	from 12,980 to 420
8324	from 8,820 to 6,310
8333	parameters changed
8358	from 7,730 to 5,970
8530	from 36,340 to 25,720
8539	from 14,050 to 5,470

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8548	from 5,320 to 4,200
8557	from 6,770 to 4,800
8560	from 4,180 to 2,920
8563	from 5,840 to 2,360
8566	from 1,040 to 2,990
8575	from 13,990 to 5,640
8578	from 1,040 to 2,840
8581	from 5,410 to 3,760
8590	from 1,040 to 5,140
8593	from 12,730 to 5,130
8596	from 5,220 to 7,060
8602	from 7,330 to 2,690
8605	from 11,460 to 4,210
8608	from 8,580 to 3,150
8617	from 51,850 to 14,160
8652	from 5,920 to 5,720
8664	from 1,940 to 780
8667	parameters changed
8685	parameters changed
8688	from 9,230 to 3,720
8691	from 8,620 to 3,480
15622	from 1,040 to 6,520
15637	from 4,180 to 5,640
15645	from 2,090 to 840
15746	from 35,920 to 5,050
15759	from 10,260 to 2,270
15765	from 1,020 to 410
15768	from 1,280 to 3,620
15773	from 7,100 to 2,860
15776	from 9,230 to 8,910
15820	from 1,040 to 1,010
15832	parameters changed

**For the MD of Greenview**

<u>PPI-ID Number</u>	<u>Change Code from 0039 to 0060</u>
321130	Transfer to Amoco
321131	Transfer to Amoco
321132	Transfer to Amoco
321133	Transfer to Amoco
323623	Transfer to Amoco
323624	Transfer to Amoco

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<u>PPI-ID Number</u>	<u>Change Code from 0039 to 0060</u>
323625	Transfer to Amoco
323626	Transfer to Amoco
326265	Transfer to Amoco
326266	Transfer to Amoco
326267	Transfer to Amoco

  

	<u>Change Assessed Value (\$)</u>
408572	from 56140 to 0

**For Wheatland County**

<u>PPI-ID Number</u>	<u>Change Code from 0039 to 0(?)46</u>
396278	Transfer to Husky

**Costs**

No costs to either party.

**REASONS**

**Wheatland County**

The Linear Assessor, during the course of the hearing, advised that no request for information was made of the Complainant. As no request was made, the sole issue is whether or not the Complainant owns the linear property. The evidence of the Respondent is that a third party owns the property and the Linear Assessor recommended the Board make the appropriate change.

**Municipal District of Greenview**

The evidence before the Board and agreed to during the course of the hearing by the Respondent, is that the Complainant had filed with the Linear Assessor the required Declarations of Special Operator, in the approved form, and within the time period specified in the Handbook.

The evidence of the Respondent is that a third party owns eleven of the properties under complaint and that the one flowline under complaint is from a non producing well. In addition, the Respondent recommended that the Board make the appropriate changes.

**Municipal District of Wainwright**

With respect to the complaints in the Municipal District of Wainwright, the Respondent put forward the argument that the December 3, 1998, letter and accompanying Handbook was a requirement to report to the Minister on the specifications and characteristics of linear property as of October 31 pursuant to section 292(3) of the Act and a request by the Linear Assessor, pursuant to section 295(1) of the Act, for information necessary to prepare the linear assessment. The implication being that as a joint requirement/request, any operator of linear property failing to provide the specifications and characteristics would lose their right to file a complaint under section 295(4) of the Act.

In so far as a request for information necessary to prepare an assessment carries with it the penalty of a loss of the right to complain about an assessment, the Board is of the opinion that any request made pursuant to section 295(1) of the Act must be clear, concise, relevant and necessary. Clear and unequivocal with respect to what is requested and how the information is to be provided and relevant as to what is requested. In addition, section 295(1) of the Act specifically requires that the information be "...necessary for the assessor to prepare an assessment or determine if a property is to be assessed." The Board takes this to mean it must be information indispensable to prepare an assessment of the property held by the person, the assessor must not have access to the information and it must be information that can only be obtained from the person of whom the request is made.

Having outlined what is required of a request under section 295(1) of the Act, the Board looked to the facts surrounding the request of December 3, 1998, of Talisman by the Linear Assessor regarding Talisman's linear property in the Municipal District of Wainwright. In the Board's opinion the request was not made under section 295(1) of the Act because it was neither clear nor concise regarding what would constitute compliance with the request.

There may be a case where a request, pursuant to section 295(1) of the Act, should be made of an operator of linear property. However, in the absence of clarity and conciseness, the Board is of the opinion that the request of December 3, 1998, was for the specifications and characteristics of linear property as required under the reporting function of section 292(3) of the Act. Failure to report under section 292 of the Act does not carry a penalty, therefore the Board must address the merits of the issues under complaint.

In the alternative, if the Board erred in its interpretation of the facts surrounding the letter of December 3, 1998, the evidence is clear that Talisman did not send in any changes on the detailed equipment listing that was sent out with the December 3 letter and Handbook. However, it is evident that the Handbook reporting guidelines and training sessions established a reporting format. That format specified that only changes to the detailed equipment listing were to be returned. Individual sheets of the detailed equipment listing with no changes were not to be returned to the Linear Assessor. In addition, the evidence of the Respondent is that incorrect

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reporting in response to the Linear Assessor's request is not a bar to filing a complaint. Talisman fully complied with the reporting format by not returning the unchanged detailed equipment listing for the MD of Wainwright, thereby reporting no change. In accordance with the reporting format, Talisman complied with the request of December 3, 1998 and therefore complied with the request for information. With Talisman being in compliance with the request for information, section 295(4) of the Act does not apply to the subject complaints.

The Respondent confirmed during the course of the hearing that each of the items under complaint is in error and recommended, if the Board has jurisdiction, that the appropriate changes be made.

**Costs**

The hearing of these complaints by the Board represents a test of new legislation, new departmental procedures and new methods of reporting. Neither party displayed misconduct or acted in a manner detrimental to the legislative process or the functioning of the Board's procedures.

Dated at the City of Edmonton, in the Province of Alberta, this 25th day of February, 2000.

MUNICIPAL GOVERNMENT BOARD

P. Tichinoff, Member

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**APPENDIX "A"**

**APPEARANCES**

<b>NAME</b>	<b>CAPACITY</b>
B. Mason	Solicitor for the Respondent Linear Assessor
N. Reid	Solicitor for the Linear Assessor
J. Husar	The Linear Assessor, Alberta Municipal Affairs
K. Johnson	Assessment Services Branch, Alberta Municipal Affairs
L. Ludwig	Solicitor for the Appellant, Talisman Energy
D. Bielecki	Tax Analyst, Talisman Energy
K. Marsh	Assistant Manager, Property Tax, Trans Canada Pipeline - witness for the Appellant
R. Gagne	President, AEC Valuations (Western) Inc. - witness for the Appellant

**APPENDIX "B"**

**I. DOCUMENTS RECEIVED PRIOR TO AND AT THE HEARING AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1R	Memorandum of Argument of the Applicant, Alberta Municipal Affairs, on Section 295(4) of the Municipal Government Act
2R	Book of Legal Authorities for Alberta Municipal Affairs' Argument on Section 295(4) of the Municipal Government Act.
3aR	Evidence Documents for Alberta Municipal Affairs' Argument on Section 295(4) of the Municipal Government Act
3bR	Evidence Documents for Alberta Municipal Affairs' Argument on Section 295(4) of the Municipal Government Act
4R	Alberta Municipal Affairs' Rebuttal to Appellant's Section 295(4) Brief

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- 5R Alberta Municipal Affairs' Rebuttal to Merit Brief of the Appellant
- 6A Volume 1 Brief of Law of the Appellant (Talisman) - 1999 Linear Appeals - Merit Issues
- 7A Volume 2 - Brief of the Appellant - Merits
- 8A Brief of the Appellant - Re: Section 295(4) of the Municipal Government Act
- 9A Rebuttal of Talisman Energy Inc.
- 10R Ministerial Order No. L:269/96 dated June 20, 1996 designating Jerry Husar as an assessor within the meaning of s.284(d)(i) and as the assessor responsible for the preparation of assessment for linear property.
- 11A Handwritten notes of Greg Johnson for reference during speech at seminar in fall of 1998.
- 12A Employee profile of Kenneth Robert Marsh
- 13A Curriculum Vitae - Rene G. Gagne
- 14A Fax Message from Assessment Services Branch to Danielle Bielecki at Talisman dated December 9, 1999, providing agreed to changes to the listing for certain PPI-IDs in the MD of Wainwright
- 15A Fax Message from Assessment Services Branch to Danielle Bielecki at Talisman dated December 10, 1999 providing a listing of PPI-IDs in the MD of Greenview which will be transferred to Amoco
- 16A Excerpts from Alberta Municipal Government Board Order 96/95, signed on November 16, 1995
- 17A Alberta Municipal Government Board Procedure Guide dated September 1999.



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18A Handwritten testimony notes of Ken Shaw, Newell Group,  
dated December 9, 1999.

**II. DOCUMENTS RECEIVED FOLLOWING SUBMISSION MADE ON DECEMBER 13,  
1999 AND REVIEWED BY THE BOARD**

1. Volumes I, II and III being the transcript of the hearing prepared by Court Reporter from Alberta Professional Reporters Inc.
2. Letter dated December 16, 1999 to the Board from B. Mason, Solicitor for the Linear Assessor, providing concurrence with the testimony of Danielle Bielecki respecting the accuracy of adjusted amounts on the basis of changes to the specifications and characteristics of the properties under complaint.
3. Letter to the Board from Danielle Bielecki received by the Board on December 20, 1999, providing the listing outlining changes to the specification and characteristics of the properties under complaint in accordance with the testimony at the hearing.