BOARD ORDER: MGB 034/06

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF A COMPLAINT respecting linear property assessments for the 2004 tax year filed on behalf of Alberta Oil Sands Pipeline Limited (AOSPL).

BETWEEN:

Alberta Oil Sands Pipeline Ltd. – Complainant

- a n d -

The Crown in the Right of the Province of Alberta, as represented by the Minister of Municipal Affairs (Assessment Services Branch) – Respondent

BEFORE:

Members:

R. Scotnicki, Presiding Officer
J. Gilmour, Member
L. Patrick, Member

Secretariat:

M. d'Alquen

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on February 28, 2005 and March 1, 2, 8, 9 and 10 and April 11, 2005 concerning complaints regarding linear property assessments prepared by the Designated Linear Assessor and entered in the assessment roll of Alberta municipalities as summarized in Table 1.

Table 1: Linear Property Assessment Under Complaint

Assessee MA ID	**Assessee**	**Municipality Name**	**TJ MA ID**	**Property Type**	**LPAU-ID**	**Assessment 2003**
20237	AOSPL	R.M. of Wood Buffalo	0508	Pipeline	2122895	$ 4,484,640
20237	AOSPL	County of Athabasca Lakeland County	0012 0538	Pipeline	2122898 2122899	$ 4,188,550 $ 9,513,130 $13,701,680
Total Assessed Value						$18,186,320

OVERVIEW

The main issue in this appeal is whether two oil pipeline "loops" are assessable for the 2004 tax year. The Complainant requested that the assessments be set to zero, contending that the subject properties were neither completely constructed nor capable of being used to transmit oil as of October 31, 2003 and, therefore, non-assessable pursuant to section 291(2) of the Act. The Respondent requested that the assessments be confirmed, arguing the negative of the Complainant's position.

The Complainant also raised a jurisdictional issue as to whether the Designated Linear Assessor has authority to sub-delegate the preparation of linear property assessments and if so, whether he properly delegated that statutory power to the assessor of the subject properties.

Finally, the Complainant indicated an intention to request costs.

In order to deal with the issues raised in this appeal, this Order is organized into three parts.

PART I: ASSESSABILITY OF THE SUBJECT PROPERTY

A. BACKGROUND

The AOSPL Pipeline System and AOSPL Stage 3 Looping Project

This complaint concerns the assessment of two 24-inch pipeline "loops" known as Lines 253 and 255. Line 253 is approximately 18.1 kilometres, while Line 255 stretches some 55.3 kilometres. Lines 253 and 255 are both adjuncts to a pre-existing 22-inch pipeline (the Original Pipeline) that was constructed in 1977 and stretches 438 kilometres from Mildred Lake, north of Fort McMurray, to processing facilities near Edmonton. Each loop is designed to receive oil from a hole cut into the Original Pipeline and then re-introduce it to the Original Pipeline through a second hole farther downstream.

In 2001, Syncrude planned a multi-billion dollar, multi-year staged expansion of the Mildred Lake facility to double the output of synthetic crude. As the Original Pipeline was already operating at full capacity, Syncrude requested an increase in design capacity from 275,000 to 389,000 barrels per day by July 1, 2004. The AOSPL Stage 3 Looping Project (the Project) was devised in response to this request. As envisaged, the Project was to consist of four pipeline loops in the northerly "Green Zone" and five pipeline loops in the southerly "White Zone". Sixteen-inch diameter crossover piping was to bridge the Original Pipeline to the Project loops. In addition, the Mildred Lake facility's pumping capacity was to be increased. The Complainant planned to construct and commission the Project during two winter and two summer seasons between 2002 and July 2004.

<u>The Green Zone Loops</u>

To put the subject loops in context, the five Green Zone loops, their terminal points, names and sizes are summarized in Table 2 below. However, only Lines 253 and 255 are currently before the MGB as subjects of a complaint. Line 253 extends from the Algar Station to a valve labelled A2MLV10. Line 255 extends from valve A2MLV14 to valve A2MLV18. The 'to' and 'from' locations shown on the lines' AEUB licenses match these points. Both lines also have intermediate valves: two for line 253 and three for line 255.

Table 2: Green Zone Loop Descriptions

Line No.	AOSPL Name	From Location (Township, Range)	To Location (Township, Range)	Length (kilometres)	Diameter (inches)
251	AOSPL Loop #1	92, 11	90, 11	21.7	30
252	AOSPL Loop #2	86, 12	84, 11	22.1	30
253	Algar Loop #1	84, 11	82, 12	18.1	24
254	(not constructed)	80, 13	80, 14	8.1	24
255	House River Loop	78, 15	73, 17	55.3	24

Execution of the Project

The Complainant retained Colt Technologies to design the project, procure materials and manage the construction. In turn, Colt Technologies retained O.J. Pipelines as the main contractor for pipeline construction and Petro-Line as the contractor for crossover piping, hot-tap and valve work. The Complainant also retained VECO Engineering for the Remote Telemetry Units (RTU), commissioning and valve control work. Commissioning of the project was a joint effort between contractor staff, specialty companies and consultants working under the auspices of Pembina Operations Group. In all, twenty to thirty consulting companies received direction from the Complainant.

Previous MGB Orders and Judicial Review

This is not the first case involving a pipeline where status of completion and capability of being used to transmit product have been at issue. In their submissions, the parties referred frequently to Board Order MGB 106/02 (Alliance Order), the Alberta Court of Queen's Bench decision Alliance Pipeline Ltd. v. Alberta (Minister of Municipal Affairs), [2004] A.J. 226 (Alliance Decision) and the Board Order MGB 086/04 (Corridor Order). At the time of the hearing, the Minister was seeking judicial review of the Corridor Order. In addition, an appeal had been filed with the Alberta Court of Appeal regarding the Alberta Court of Queen's Bench's Judicial Review of the MGB's Alliance Order.

On November 22, 2005, after the MGB hearing had adjourned, the Court of Queen's Bench released Alberta (Minister of Municipal Affairs) v. Alberta (Municipal Government Board) [2005] A.J. No. 1621, which upheld the Corridor Order. Subsequently, on January 11, 2006, the Alberta Court of Appeal released Alliance Pipeline Ltd. v. Her Majesty the Queen in Right of the Province of Alberta, as represented by the Minister of Municipal Affairs, and the Municipal Government Board (2006 ABCA 9), which reversed the Alliance Decision, quashed the Alliance Order, and reduced the relevant pipeline assessment to zero.

After learning of these decisions, the MGB requested written party comments (and replies) as to their impact on the matter currently before the MGB. The decisions and comments were considered by the MGB before rendering its decision.

B. THE ISSUE

The primary issue in this appeal is whether Lines 253 and 255 are non-assessable pursuant to section 291(2)(a) of the Act. This issue gives rise to two major sub-issues, as follows.

1. Were the subject properties under construction but not complete on or before October 31, 2003 within the meaning of paragraph 291(2)(a) of the Act?

2. Were the subject properties capable of being used for the transmission of oil on or before October 31, 2003 within the meaning of paragraph 291(2)(a) of the Act?

C. LEGISLATION and OTHER AUTHORITIES

In order to decide this matter, the MGB examined sections of several acts, associated regulations and other authorities.

Municipal Government Act

Section 284(1)(k) defines "linear property" to include pipelines. Part A of subsection (iii) then indicates that "pipelines" include any continuous string of pipe including loops intended for or used in transporting oil. Further, Parts F and G of sub-paragraph (iii) identify items that are not included under "pipelines".

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

(k) "linear property" means

(iii) pipelines, including

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

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

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

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

(II) injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,

(III) supplying water for injection to an underground formation, or

(IV) monitoring or observing performance of a pool, aquifer or an oil sands deposit,

(D) well head installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph (C) or for the protection of the well head installations,

(E) the legal interest in the land that forms the site of wells used for any of the purposes described in paragraph (C) if it is by way of a lease, licence or permit from the Crown, and

(E.1) the legal interest in any land other than that referred to in paragraph (E) that forms the site of wells used for any of the purposes described in paragraph (C), if the municipality in which the land is located has prepared assessments

in accordance with this Part that are to be used for the purpose of taxation in 1996 or a subsequent year,

but not including

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

(I) any processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facilities, or

(II) a regulating or metering station,

or

(G) land or buildings; … .

Section 291 of the Act sets out rules for assessing improvements. In particular, paragraph 291(2)(a) precludes the assessment of linear property if under construction, but not complete before October 31 in the year prior to the tax year, unless it is capable of being used to transmit oil, gas, or electricity. The interpretation and application of the facts related to the subject properties in relation to section 291(2)(a) is central to the determination of this case. Notably, the Act does not define the terms "construction" or "capable".

291(1) Unless subsection (2) applies, an assessment must be prepared for an improvement whether or not it is complete or capable of being used for its intended purpose.

(2) No assessment is to be prepared

(a) for linear property that is under construction but not completed on or before October 31, unless it is capable of being used for the transmission of gas, oil or electricity,

(b) for new improvements that are intended to be used for or in connection with a manufacturing or processing operation and are not completed or in operation on or before December 31, or

(c) for new improvements that are intended to be used for the storage of materials manufactured or processed by the improvements referred to in clause (b), if the improvements referred to in clause (b) are not completed or in operation on or before December 31.

Section 292 of the Act sets out requirements for linear property assessments. In particular, the assessment must reflect the valuation standards set out in the Regulations and the specifications and characteristics of the linear property on October 31 in the year prior to the tax year as contained in the AEUB records.

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

(2) Each assessment must reflect

(a) the valuation standard set out in the regulations for linear property, and

(b) 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, as contained in

(i) the records of the Alberta Energy and Utilities Board, or
(ii) the report requested by the assessor under subsection (3).

***Matters Relating to Assessment and Taxation Regulation, AR 289/99 (*the Assessment Regulation)**

Section 6 of the Assessment Regulation provides that linear property must be assessed by following procedures established by the Alberta Linear Property Assessment Minister's Guidelines.

6(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 Department of Municipal Affairs, as amended from time to time.

Consolidation of 2003 Minister's Guidelines Regarding the Assessment of Farm Land; Linear Property; Machinery and Equipment; Railway (the Guidelines)

By Ministerial Order, the Minster of Municipal Affairs (Minister) has established Guidelines for the assessment of linear property, as referenced in section 6 of the Assessment Regulation.

Appendix II of the Guidelines, entitled 2003 Alberta Linear Property Assessment Minister's Guidelines, outlines the assessment procedure for pipeline properties. One part of the procedure involves determining the base cost of pipeline properties according to their physical attributes, as prescribed by regulated rates per linear unit of pipe.

For some linear properties, the base cost is determined by reference to Appendix V of the Guidelines, entitled 2003 Alberta Construction Cost Reporting Guide. It outlines the costs to be included and not included in assessable costs. In particular, sections 2.000 and 2.200 identify commissioning as a post-construction activity that is excluded from the assessable cost. In the interests of brevity, those sections of the Guidelines are not reproduced in this Order.

***Pipeline Act,* R.S.A. 2000, c. P-15**

The MGB was referred to several sections of the *Pipeline Act* and associated regulations. Paragraph 1(1)(t) of the *Pipeline Act* provides its own definition of "pipeline". Notably, it is different from that provided in the Act.

1(1) In this Act,
(t) "pipeline" means a pipe used to convey a substance or combination of substances, including installations associated with the pipe, but does not include

(i) a pipe used to convey water other than water used in connection with a facility, scheme or other matter authorized under the Oil and Gas Conservation Act or the Oil Sands Conservation Act ,
(ii) a pipe used to convey gas, if the pipe is operated at a maximum pressure of 700 kilopascals or less, and is not used to convey gas in connection with a facility, scheme or other matter authorized under the Oil and Gas Conservation Act or the Oil Sands Conservation Act , or
(iii) a pipe used to convey sewage; … .

***Alberta Pipeline Regulation*, AR 122/87 (the Pipeline Regulation)**

Section 6 of the Pipeline Regulation references the most current edition of Canadian Standards Association (CSA) Z662 as the minimal codes and standards for the design, construction, operation and leak detection of oil pipelines systems.

6(1) Reference in this Regulation to a CSA standard is to the latest published edition of the standard issued by the Canadian Standards Association, and includes any published addendum.
(2) The minimum requirements for the design, construction, testing, operation, maintenance and repair of pipelines shall be in accordance with CSA Z662 Oil and Gas Pipeline Systems, insofar as it is not inconsistent with this Regulation.
(3) The minimum requirements for leak detection procedures on liquid pipelines other than multi-phase or oilfield water pipelines shall be in accordance with Appendix E of CSA Z662 Standard, insofar as it is not inconsistent with this Regulation.
(4) Notwithstanding subsection (2), if an applicant proposes to use materials or components manufactured to standards not listed in the CSA Standard, the applicant shall provide sufficient documentation to enable the Board to determine their acceptability for the intended purpose and, if the Board is satisfied, it may allow the use of those materials or components.

Sections 28 to 32, 34 to 37 and 39 of the Pipeline Regulation mandate the completion of a pressure testing and inspections of a pipeline in compliance with specified criteria before placing it in operation.

28 A pipeline may be placed into operation when
(a) a satisfactory pressure test has been completed and fully documented,
(b) the pipeline test pressure has been reduced to at least the proposed maximum operating pressure and, if necessary, purged, and
(c) all tie-ins have been completed and inspected.

29 Pipelines shall be pressure tested in place under the same conditions as those that will prevail when the pipelines will be in operation.

30 Pressure tests shall be conducted in a manner that will ensure the protection of persons and property in the vicinity of the pipeline.

31 Any leak or break that occurs in a pipeline during testing shall be reported to the Board, and the report shall include

(a) the test pressure at the time of failure,
(b) the duration of the test up to the time of failure, and
(c) any other information the Board requires.

32(1) The appropriate Board area office shall be notified at least 48 hours prior to the commencement of any test.
(2) If a representative of the Board will not be present, a test may with prior approval of the Board be conducted under the supervision of a permittee or licensee.

34 The Board may specify the maximum length of pipe to be tested in any test.

Canadian Standards Association Z662-03 Oil and Gas Pipeline Systems and Commentary

The parties also referred to CSA standard Z662-03, which covers the design, construction, operation and maintenance of oil and gas industry pipeline systems that convey crude oil and other liquid hydrocarbons. The MGB notes that this document does not have the force of law by itself, but is referenced by the Pipeline Regulations.

CSA Z662-03 defines "construction", "piping" and "component" as follows. Notably, however, the standard does not define field fabrication, installation, pressure testing or commissioning.

> Construction – all activities required for the field fabrication, installation, pressure testing, and commissioning of piping.
>
> Piping – a portion of a pipeline system, consisting of pipe or pipe and components.
>
> Component – a pressure-retaining member of the piping, other than pipe.

Appendix E of CSA Z662-03 is entitled "Recommended Practice for Liquid Hydrocarbon Pipeline System Leak Detection". It identifies the requisite frequency and the nature of monitoring for leak detection. It also defines "leak detection" and "material balance" as follows.

> Leak Detection System – any computational method used to determine the existence of a pipeline leak.
>
> Material balance – a mathematical procedure, based on the laws of conservation of matter and fluid mechanics, that is used to determine whether a leak has developed in a pipeline segment.

Canadian Standards Association Z662-99 Oil and Gas Pipeline Systems and Commentary

CSA Z662-99 provides a definition of "construction" that is different from that provided by its predecessor standard CSA Z662-03.

> Construction – all activities required to fabricate, install, test, and commission pipeline systems.

D. SUB-ISSUE 1: CONSTRUCTION STATUS

Complainant's Position on Construction Status

Summary

Three witnesses appeared on the Complainant's behalf.

Mr. Webb, P. Eng., was Vice President and General Manager of Pembina Pipeline Corporation from July 1995 to December 2003 and had senior managerial responsibilities with respect to the Project. He provided a general overview of the Project from a business perspective.

Ms. Pinto is an accountant with Pembina Pipeline Corporation and a member of the Canadian Property Tax Association with more than twenty years of experience in the oil and gas industry. She described her involvement in the assessment and complaint process in regard to the subject properties.

Mr. Fyfe, P. Eng., was employed by Pembina Pipeline Corporation as the senior engineering manager of the project. His education is in mechanical engineering and his work experience includes pipeline construction. He described the project's completion status as well as its operational components, monitoring and safety systems.

The Complainant submitted that Lines 253 and 255 were under construction because the following steps had not yet occurred:

- "Hot tap tie ins" and installation of the necessary plugs to allow flow from the existing pipeline into the loops
- Line purge and line fill
- Commissioning of RTUs, satellite link and remote valve control
- Installation of SCADA pipeline controls and screens
- Wet commissioning of valves and sensory equipment
- Repairing of stem and seal leaks
- Installation and testing of the Leak Detection System
- Performance and safety testing

Meaning of "Under Construction"

The Complainant submitted that "construction" should be interpreted broadly to include field fabrication, installation, pressure testing and commissioning. This definition is consistent with the CSA definition of construction and was applied by the MGB in the Alliance and Corridor Orders. More importantly, it is consistent with the recent decisions of both the Alberta Court of Queen's Bench and the Alberta Court of Appeal concerning the interpretation of section 291(2)(a). For example, the Court of Queen's Bench stated the following in its judicial review of the Corridor Order.

> The MGB concluded that construction should be interpreted broadly to include testing and commissioning activities such as "pressure testing, radiographic testing, wet commissioning, venting and performance testing.
> …
> The MGB's interpretation of "construction" meets the standard of reasonableness and there is no basis for this Court to interfere.

While the Court of Appeal in the Alliance Decision focussed mainly on the "capability of being used" requirement, its comments on the interpretation and purpose of section 291(2) as a whole preclude a more restrictive definition of construction. The Court of Appeal identified the purpose of section 291(2) as

> … to provide a tax incentive to encourage major industrial investment in Alberta by exempting certain property from assessment ... .

As such, the Court found that the "teleological approach" to statutory interpretation requires that section 291(2)(a) be "interpreted liberally and in favour of the taxpayer". Furthermore, the Court found that the tax relief provided under section 291(2) was intended to continue until a pipeline is "ready to go".

> In my view, a pipeline is assessable when it is "ready to go", by which I mean that it is capable of the safe commercial transmission of gas.

This point would not occur until

> … the pipeline has completed the basic safety and systems testing to ensure that the public and the environment are not at risk when the pipeline moves to full line capacity.

The Complainant concluded that the restrictive definition of construction adopted by the Respondent was neither consistent with previous MGB decisions nor with the overriding principles laid down by the Court of Appeal.

Construction of Lines 253 and 255 was not Complete

The Complainant submitted that construction of Lines 253 and 255 was not complete on or before October 31, 2003 because several uncompleted activities prevented the Pipeline from being "ready to go" as described by the Court of Appeal. Mr. Fyfe identified several activities and their completion dates, as summarized in Table 3.

Table 3: Schedule of Activities Necessary for Completion of Construction of Lines 253 and 255

Phase / Activity	**Actual Completion Date**	
	Line 253	**Line 255**
Installation		
Hot-tap to System piping Installation of pig bar plug and completion plug on crossover piping	February 9, 2004 (valve A2MLV10)	December 9, 2003† (valve A2MLV14)
Commissioning		
Line purge with nitrogen	February 11, 2004	December 10, 2003
Line fill with crude oil	February 13, 2004 (31,000 barrels)	December 12, 2003† (96,000 barrels)
RTU to SCADA host satellite communication points check and remove valve control	February 6, 2004 (power available August 29, 2003)	February 5, 2004 (power available August 28, 2003)
Wet commission main line block valves – repair stem and seal leaks	April 5, 2004	April 5, 2004
Install and test SCADA pipeline controls and screens	September 1, 2004	September 1, 2004
Install and test leak detection program	September 1, 2004	September 1, 2004
Performance and safety testing at 12,580 barrels per day	September 24, 2004	September 24, 2004

† Exhibit C-23 indicates the year as 2003, whereas Exhibit C-39 indicates the year as 2004. The MGB assumes that C-23 is correct and that the year provided in C-39 is a typographical error.

Mr. Fyfe and other witnesses at the hearing explained that the "hot-tap" procedure referred to above is a procedure to connect an existing operational pipeline to a cross-over pipe while oil flows under pressure in the existing pipe. With regard to these connections, Mr. Fyfe indicated that the preliminary work had already been performed, but no holes had been cut into the Original Pipeline as of October 31, 2003. It was, therefore, physically impossible for oil to flow into or out of Lines 253 and 255 at the relevant date. He indicated that the coring operation required approximately two days at each site. Additionally, line fill could not be performed until the hot-tap had been performed.

With regard to line fill, Mr. Fyfe indicated that this procedure requires careful flooding of the pipe and substantial scheduling to ensure the availability of significant quantities of oil. The operation required approximately two days for each loop.

With regard to the block valves, Mr. Fyfe indicated that they are used to isolate flow at strategic points of the pipelines for emergency or repair. Given their substantial size and locations, they can only be operated practically by power using a remote control system. While the valves had been installed before October 31, 2003, they had not been powered, commissioned or tested as of that date. In addition, Mr. Fyfe indicated that one valve on Line 253 and one valve on Line 255 exhibited leaking after the line fill. The Complainant's operations staff, construction staff and valve suppliers took approximately two months to determine that temperature changes and freezing and thawing of moisture had damaged the valve seals. Eventually, the problem was remedied by the Complainant's maintenance staff injecting specialty sealant into the valve seals. Under questioning, Mr. Fyfe described the leaks as drips, not of sufficient severity to warrant reporting to the AEUB.

With regard to RTUs and satellite links, Mr. Fyfe stated that their commissioning was critical to guard against over-pressuring the existing Original Pipeline and to operating the leak detection system. The reason is that the RTUs relay sensory information from pressure transmitters and valve status indicators to the automatic control system and return commands to close valves and turn off pumps so as to prevent spillage.

With regard to the leak detection system, Mr. Fyfe indicated that hardware in the form of RTU buildings had not been installed and that mathematical programming procedures were underway, but not complete as of October 31, 2003.

Additionally, Mr. Fyfe believed that construction of Lines 253 and 255 was not complete until they had been commissioned for their post-expansion design capacity. A Syncrude press release dated March 2004 indicated that the completion date of the UE1 expansion was postponed to mid-2006. As such, Syncrude had not completed the construction required to transmit crude oil at the post-expansion rates. Specifically, three new 1500 horsepower pumps had not been installed at the Mildred Lake facility. Therefore, while Line 253 and Line 255 were operating at pre-expansion flow rate at the time of the hearing, Mr. Fyfe could not issue final sign-off on the project because it had not been tested at the post-expansion flow rate.

Under questioning by the Respondent, Mr. Fyfe indicated that his understanding of the Project construction status was informed by events after October 31, 2003. Also, he believed that construction of Lines 253 and 255 would have been complete as of October 31, 2003 based on the extent of the installation of pipeline, valves, RTUs and SCADA hardware, if construction did not include commissioning.

Under questioning by the MGB, Mr. Fyfe indicated that the AEUB did not impose any filing requirements at such time that the pipeline is completed or capable of being used to transmit oil.

Moreover, he indicated that the construction insurance policy for the project expired at the end of 2004 to ensure coverage until the scheduled completion date of July 2004 plus an additional period for clean-up and commissioning activities. Also, he was unaware of any financial considerations dependent on the completion or transmission date of the subject properties since project costs were rolled into the tariff for the existing line on an as-incurred basis.

Definition of Linear Property

The Complainant rejected the Respondent's submission that a pipeline is constructed once components listed in subparagraph 284(1)(k)(iii) of the Act are installed on a continuous string of pipe. That provision merely determines what is to be taxed, whereas subsection 291(2) determines whether it should be taxed. In any event, the Complainant submitted that "improvements used for the protection of the pipeline" referred to in subparagraph 284(1)(k)(iii) of the Act includes a leak detection system, which was not commissioned as of October 31, 2003. Moreover, subparagraph 284(1)(k)(iii) of the Act requires that there be a "continuous string of pipe including loops". An impermeable barrier prevented the flow of oil out of the original Pipeline into Line 253 and Line 255 as of October 31, 2003; therefore, the strings of pipe were not continuous.

Respondent's Position on Construction Status

Summary

Two witnesses appeared on the Respondent's behalf.

Ms. Uttley is Operations Manager and Appeal Coordinator with the Department of Alberta Municipal Affairs and, as such, supervises staff during preparation of well and pipeline assessment.

Mr. Moffat is a senior engineering consultant with extensive experience relating to the design and construction of major pipeline projects. His education in mechanical engineering includes degrees and postgraduate coursework in fluid mechanics, numerical analysis, gas processing and multiphase flow. His experience in pipelines dates to 1975 and includes the planning and design of several large pipeline projects. He is also familiar with the Original Pipeline, having performed pressure surge analyses of the Original Pipeline approximately ten to fifteen years ago.

The Respondent argued that lines 253 and 255 were completed construction as of October 31, 2003, because both pipelines formed continuous pressure tested strings of pipe from source to destination and because all components as specified in the definition of pipeline under section 284(1)(k)(iii) were in place.

Meaning of "Under Construction"

The Respondent submitted that the decisions of the Alberta Court of Queen's Bench and the Alberta Court of Appeal regarding the MGB's Corridor and Alliance Orders are of little assistance in determining the appropriate definition of "construction". With respect to the Queen's Bench decision in Corridor, Justice Lefsrud concluded that the MGB's broad interpretation was not unreasonable; however, this finding does not mean it is correct. Furthermore, the MGB's task is to interpret "construction" using the modern approach to statutory interpretation, which involves considering the plain and ordinary meaning of words read in their entire context harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature. Although Justice Lefsrud agreed that the modern approach to statutory interpretation should be applied, he did not consider whether the MGB had applied that approach properly.

With respect to the Alliance cases, neither the Court of Queen's Bench nor the Court of Appeal addressed the issue of "construction" or were called upon to do so. Furthermore, the Court of Appeal commented that it would have preferred the MGB to articulate a clear interpretation of the purpose of section 291 and - in the absence of one from the MGB - substituted its own understanding. The MGB now has an opportunity to provide a clear statement of the purpose of section 291 using the modern purposive approach.

To this end, the Respondent submitted that the purpose of section 291(a) is not to encourage faster industrial development; rather section 291 is intended to assist municipal and linear assessors determine when assessments for improvements and linear property must be prepared. The plain language of the provision reveals that there are separate tests for different types of property based on their state of physical completion and that operation is not a consideration for linear property. This purpose has regard for the definitions of "improvement", "linear property" and "machinery and equipment" and their importance to section 291. It also reflects the logical ordering of the Act, which contains separate provisions for exemptions from assessment and taxation.

With this purpose in mind, the Respondent submitted that the MGB should apply the plain and ordinary meaning of the undefined term "construction": namely, to build or install. Subsection 291(2)(a) is concerned with the existence or physical completion of linear property and not its operation as is the case under subsections 291(2)(b) or (c); therefore, the legislation does not intend commissioning and other operations activities to be parts of "construction". The MGB should not allow itself to be misled by importing definitions in CSA Z662-03.

The Respondent supported its interpretation by pointing to the evidence of Mr. Moffat and Ms. Uttley as described briefly below. For example, Mr Moffat submitted the test for construction completion is as follows:

> The stage at which all parts of the cross-country pipeline have been put together in final form and position. When the pipe and listed appurtenances have been installed and joined together into a *continuous string of pipe*, extending from source to destination, then construction of the pipeline has been completed. The integrity of construction of the completed string of pipe is further confirmed and provided by the pressure tests (as is safety for operating personnel, the public, and the environment).

Mr. Moffatt also explained that he considered pressure testing to be part of construction, even though it does not involve installation, because it is invariably performed by the construction contractor and is seamlessly interwoven with other construction activities. On the other hand, line fill and commissioning are not part of construction within the ordinary sense of the word, as they do not involve the fabrication or installation of parts; rather, they prepare an already constructed system or component for service by partial or trial use by filling the pipe, opening and closing valves and calibrating instrumentation.

Mr. Moffatt cautioned against adopting the CSA Z662 definition of construction for the purposes of assessment. First, CSA Z662 is highly specialized for the purpose of pipeline engineering and inconsistencies between its definitions and those of the Act can result in illogical consequences. For instance, the CSA definition of "construction" refers specifically to "piping," which does not include RTUs. In contrast, "pipeline" as defined in the Act does include RTUs. Hence, applying the CSA definition of "construction" to the definition of "pipeline" under the Act renders it impossible to construct an RTU. In addition, the CSA's definitions of terms are prescriptive and may vary from their ordinary meanings or even definitions in past editions of the CSA Z662. Thus, the definition of "construction" in the current version of the Standard revised the previous definition by substituting the word "piping" for "pipeline systems" and qualifying fabrication with the term "field".

Ms. Uttley interpreted "construction" to mean "building erecting or installing, to create something that did not previously exist." In relation to pipelines, construction is complete when all segments are welded together to form a continuous string of pipe from the 'from' location to the 'to' location on the AEUB license. This interpretation is consistent with the pipeline unit assessment rate prescribed by the 2003 Alberta Linear Property Assessment Guidelines, which is based on costs for preparing the right of way, digging the trench, piping, protective coatings, welding, x-ray inspection of welds and backfilling the trench, but not the cost to use or place the pipeline into operation.

Ms. Uttley also submitted that commissioning costs are specifically included in section 2.200 of Appendix V of the Minster's Guidelines as a post-construction activity and, therefore, excluded from the assessment value of the subject properties. Under questioning by the Complainant, Ms. Uttley acknowledged that the Interpretive Guide to Appendix V stated that "the distinctions between construction costs and project costs representing pre-construction and post-construction

activities are somewhat arbitrary", but noted that the Interpretive Guide is not legislation whereas Appendix V is under Ministerial Order L:153/03.

Relevance of the Act's Definition of Pipeline

The Respondent submitted that a pipeline is the physical asset defined in subparagraph 284(1)(k)(iii) and not what is described in the Pipeline Act, the Pipeline Regulation, or CSA Z662-3. Furthermore, section 284(1)(k)(iii) does not qualify "pipelines" with the word "system" as it does for other types of linear property. Therefore, it is not the subject loops' operational status within a broader pipeline system that determines their assessability, but rather their state of physical completion. This point occurs once the listed appurtenances are attached to pipe segments that have been welded together between the 'from' and 'to' locations on the AEUB licenses into a "continuous string of pipe".

In support of its position, the Respondent again noted the evidence of Ms. Uttley and Mr. Moffat. For example, Ms. Uttley noted that the following items are not defined components of a pipeline: SCADA, pipeline control and communication systems such as leak detection systems, hot-tap work to other pipelines, maintenance and upgrading of other pipelines, land, buildings, end facilities such as pumping stations and operational activities such as an emergency response plan.

Mr. Moffatt also emphasized that the test for completion (as well as capability) must respect the distinction between the subject "pipelines" and the entire AOSPL system. Thus, pipelines do not include pre-existing pipelines, stopple-tees, pump stations, control and communication facilities, machinery and equipment not listed under section 284(1)(k)(iii) of Act, land or buildings. In particular, the SCADA system and Leak Detection systems, are not listed under section 284(1)(k)(iii) of the Act; accordingly, SCADA components (controls, measurements, facilities, control room equipment and software) are part of the entire pipeline system.

Construction of Lines 253 and 255 was Complete

The Respondent submitted that Line 253 and Line 255 were constructed and complete on or before October 31, 2003 except for very trivial or irrelevant items that relate to non-linear property or operational concerns of the pipeline. Thus, Ms. Uttley testified that from an assessment perspective, the subject loops were constructed as of October 31, 2003, because all sections of pipe had been welded between the 'from' and 'to' locations shown on the AEUB pipeline license, and the valves and RTUs were all installed as of October 31, 2003. Furthermore, the integrity of the construction was confirmed by the successful completion of hydrostatic pressure tests.

Similarly, Mr. Moffatt gave expert engineering evidence concerning the completion of the subject loops, commenting on the following aspects of Lines 253 and Line 255:

- they were designed by qualified engineers and constructed by experienced contractors and specialists in accordance with full engineering standards, the requirements of applicable legislation and good industry practice;
- they were completely fabricated and installed in final position, with listed appurtenances, to form a continuous string of pipe before October 31, 2003;
- they successfully passed pressure tests on March 14, 2003 and February 28, 2003, respectively;
- they successfully passed caliper pig runs on March 17, 2003 and March 5, 2003 respectively indicating their integrity;
- all valve assemblies including sending and receiving traps, cross over piping and stopple-tee fittings were installed on the original pipeline between May and September, 2003;
- all RTUs on Lines 253 and 255 had been fabricated, installed, wired to instrumentation and power sources, and energized before October 31, 2003;
- daily cost reports by Colt Engineering did not indicate any work within the meaning of construction to be outstanding after October 31, 2003, except perhaps for some minor coating work of trivial value.

Mr. Moffatt believed that hot-taps are modifications and improvements to the existing original pipeline, not construction on the subject pipeline loops. Accordingly, the welding of the stopple-tee is addressed by section 10 of CSA Z662-03, entitled "Operating, Maintenance and Upgrading". Similarly, where a newly constructed pipeline connects to existing pipelines with a different owner, the industry practice is for the owner of the existing pipeline to be responsible for the hot-tap and valve connection for practical and legal reasons. In that regard, Petro-Line documents stated that the hot-tap installations are "on the NPS 22 mainline". Third, the connections used for Lines 253 and 255 allowed permanent attachment of the cross-over pipe to the stopple-tee before the hot-tap procedure such that Lines 253 and 255 were a continuous loop of pipe and were permanently attached to the System pipe before October 31, 2003.

Mr. Moffatt characterized the installation of the pig bar plug as an improvement to the System pipeline, rather than the subject property. Further, the completion plug served no function other than to permit the dismounting of the hot-tap tools. It was therefore irrelevant to the completion or capability status of the subject pipelines.

Mr. Moffatt believed that line-fill, performance and safety testing with product flow are part of pipeline operation rather than construction. Furthermore, the leaking of the main line valves is irrelevant to the issues of construction and capability as of October 31, 2003, because both the cause and remedy occurred after that date. In any event, the leak must have been trivial since the Complainant did not report it to the AEUB as required under the Pipeline Act.

Findings

1. Pipeline "construction" includes - at a minimum - those steps required to ensure a given pipeline is built, installed, and its components tested to the point where it can be said to be physically "ready to go" in the sense described by the Court of Appeal.

2. Construction may also include further fabrication, installation, testing, commissioning or still other steps that are not essential to safe commercial operation.

Decision Regarding Construction Status

Lines 253 and 255 were under construction and not complete as of October 31, 2003.

Reasons

Section 291 of the Act and the Definition of "Construction"

Section 291 indicates that "Unless subsection (2) applies, an assessment must be prepared for an improvement whether or not it is complete or capable of being used for its intended purpose." According to subsection (2)

> No assessment is to be prepared
>
> (a) for linear property that is under construction but not completed on or before October 31, unless it is capable of being used for the transmission of gas, oil or electricity, … .

Accordingly, the MGB must determine whether Lines 253 and 255 were or were not completed construction on October 31, 2003 for the purposes of section 291(2)(a). If it determines they were not completed construction, then it must decide further whether they were "capable of being used for the transmission of oil".

The Court of Appeal has held that the interpretation of section 291 is a matter of law, and that the standard of review is correctness. Therefore, the MGB must identify the correct interpretation of the provision. While the Court of Appeal in Alliance focused on the "capable of being used" portion of the test in section 291(2)(a) rather than the "completed construction" portion, it also provided direction as to the interpretation of section 291(2) as a whole and is thus of assistance in identifying the correct interpretation of "completed construction".

As stressed by the Complainant, the Court of Appeal found that section 291(2) creates exceptions to the general rule in section 291(1) that all improvements are taxable regardless of whether they are complete or capable of being used for their intended purpose. As such, the legislative purpose behind section 291(2) is

> to encourage investment in the Alberta economy by allowing major investors a deferred tax assessment date … . Without tax relief, investors would accumulate a significant tax liability in addition to the cost of acquisition or construction, before the linear property or the improvement could be used for its intended purpose.

Furthermore, the Court of Appeal indicated that since the purpose of subsection 291(2) is to provide a benefit to the taxpayer, the "teleological approach" requires that the subsection

> be interpreted liberally and in favour of the taxpayer in accordance with this purpose.

Section 291(2)(a) pertains to linear property in particular. It provides tax relief for owners of linear property and describes when that relief should come to an end. Thus, Madam Justice Conrad stated the following at paragraph 66 of her judgment.

> The interpretation of paragraph 291(2)(a), therefore, and, in particular, the interpretation of the phrase "capable of being used for the transmission of gas," must take into account the overall legislative goal of providing tax relief, while at the same time respecting the Legislature's desire for limitation. In my view, by drafting the statute in the way that it has, the Legislature intended that those who are still in the process of constructing and completing linear property will not be eligible for tax assessment, under the general taxing provisions, unless the property is **capable of being used for its intended purpose** on the statutory date of assessment.

While the above passage gives special emphasis to the phrase "capable of being used for the transmission of gas", it applies generally to section 291(2)(a) and entails important consequences for the meaning of "under construction but not complete". In particular, it follows from Justice Conrad's comments that pipeline construction cannot be complete for the purposes of subsection 291(2)(a) until a pipeline has been built and tested to the point that it is capable of being used for its intended purpose. Otherwise, a pipeline might be completed construction - and hence assessable - before it has been brought to the point where it is physically "capable of being used for its intended purpose", contrary to the interpretation of the Court of Appeal.

As described further in the next section of this Order, the Court of Appeal identified the point when a pipeline is "capable of being used for its intended purpose" as the stage when it is "ready to go" – or in other words, when it "can be used commercially" and has

> completed the basic safety and systems testing to ensure that the public and the environment are not at risk when the pipeline moves to full line capacity.

In light of the above, the MGB interprets pipeline "construction" as including - at a minimum - those steps required to ensure a given pipeline is built, installed, and its components tested to the point where it can be said to be physically "ready to go" in the sense described by the Court of Appeal. Beyond this point, construction may also include further fabrication, installation, testing, commissioning or still other steps that are not essential to safe commercial operation. In this connection, the MGB notes that each pipeline must be considered on a case by case basis. It would be difficult and ill-advised to attempt to identify a rigid series of specific steps to define pipeline construction in all cases.

The MGB finds that the foregoing interpretation conforms to the ordinary meaning of the term "construction" within the context and purpose of section 291(2) as elucidated by the Court of Appeal. It is also consistent with previous MGB Orders, including the Alliance Order (quashed on different grounds) and the Corridor Order, where the MGB found that "construction" should be interpreted broadly and that elements of field fabrication, installation, testing and commissioning provide a useful starting point for analysis.

Application of the Interpretation to the Facts

With this background, the MGB must now apply the interpretation of "construction" identified above to the facts before it to establish whether Lines 253 and 255 were "under construction but not complete". In view of the MGB's finding in the next section of this Order that further testing and commissioning steps remained to be taken before the Lines 253 and 255 were "ready to go", it follows that the subject properties were not yet completed construction for the purposes of section 291(2)(a) as of the statutory date.

E. SUB-ISSUE 2: CAPABLE OF BEING USED TO TRANSMIT OIL

Complainant's Position as to Capability of Use

The meaning of "Capable of Being Used"

The Court of Appeal in Alliance dealt squarely with the purpose and correct interpretation of "capable of being used". The Court indicated that "capable of being used for the transmission of gas" means:

> … being able to use the pipeline safely for its intended purpose – in this case, the safe commercial transmission of gas through a bullet pipeline from Northern Alberta to Chicago, Illinois.

Accordingly, "capable of being used for the transmission of oil" must mean capable of safe commercial transmission of oil. As of October 31, line-fill and testing with product flow had not yet occurred; thus, neither loop could possibly have completed the "basic safety and systems testing to ensure that the public and environment are not at risk when the pipeline moves to full

capacity". In other words, Lines 253 and 255 were not capable of being used for the transmission of oil within the meaning of section 291(2)(a) of the Act.

Linear Property Definition Not Determinative of Capability of Use

As indicated earlier in relation to construction status, the Complainant submitted that the status of pipeline components enumerated in subparagraph 284(1)(k)(iii) of the Act cannot determine the assessability of Lines 253 and 255. That provision merely determines what is to be taxed, whereas subsection 291(2) determines whether it should be taxed. Mr. Fyfe opined that a pipeline comprised only of the components enumerated in subparagraph 284(1)(k)(iii) would never be capable of being used for the transmission of oil. For instance, without a pump, oil could not flow uphill from northern Alberta to Edmonton; similarly, without meters, it would be impossible to measure oil flow or perform leak detection or custody transfer. In short, "transmission" implies an aspect of operability that requires systems to be connected and powered, even if they are separately taxed.

The Complainant further submitted that the description of "pipeline" in sub-paragraph 284(1)(k)(iii) cannot determine whether a pipeline is "capable of being used", as argued by the Respondent. Such a view interprets "capable of being used" as if the legislative intent were to tax a buried steel tube that could not be safely or legally operated. In light of Mr. Fyfe's testimony that the components listed in sub-paragraph 284(1)(k)(iii) could not in themselves constitute an operating pipeline, the Respondent's interpretation would render the capability test in sub-paragraph 291(2)(a) superfluous.

Activities Still Required to Ensure Capability of Use

The Complainant submitted that Lines 253 and 255 were not capable of being used to transmit oil as of October 31, 2003 because it was neither physically possible nor legal nor safe to do so with quantities significant to the designed or intended capacities.

Mr. Fyfe identified several activities and their completion dates that he believed were necessary before Lines 253 and 255 were capable of transmitting oil, as summarized in Table 4.

Table 4: Schedule of Activities Necessary for Lines 253 and 255 to be Capable of Being Used to Transmit Oil

Activity	**Actual Completion Date**	
	Line 253	**Line 255**
Hot-tap to System piping to permit flow of oil into loop	February 9, 2004 (valve A2MLV10)	December 9, 2003 (valve A2MLV14)
Line purge and line fill with crude oil	February 13, 2004 (31,000 barrels)	December 12, 2003 (96,000 barrels)
Wet commissioning valves and sensing equipment; valve repairs for Line 255	April 5, 2004	April 5, 2004

Revise AOSPL Emergency Response Plan	August 12, 2004	August 12, 2004
Leak detection programming, installation, testing	September 1, 2004	September 1, 2004
SCADA programming, installation, testing (including emergency sequential shutdown logic and automated remote valve control)	September 1, 2004	September 1, 2004
Flow performance and safety systems check for the initial flow rate of 12,580 barrels per day (pre-expansion flow rate)	September 24, 2004	September 24, 2004

Mr. Fyfe stated that it was physically impossible for oil to flow from the existing System pipe to Lines 253 and 255 as of October 31, 2003. Before the hot-tap, an impermeable steel barrier, prevented the flow of oil into Line 253 and Line 255.

Mr. Fyfe stated that it was unsafe, impractical and contrary to subsections 6(2) and 6(3) of the Pipeline Regulation to operate Lines 253 and 255 without an operational SCADA, leak detection system, pressure transmitters, RTUs and automated valves. He referred specifically to leak detection criteria (data retrieval and calculation intervals) specified by CSA Z662-03. He indicated the commissioning activities took two to three days per loop, but believed that there was no one specific test that marked the end of the commissioning procedure.

Mr. Fyfe believed that it was unsafe to operate Line 253 and Line 255 with two leaking valves. Notwithstanding the prior successful completion of a pressure test on the pipe, he expressed concern about the behaviour of the valves under pressure.

Mr. Fyfe indicated that the Complainant was still in the process of updating its Emergency Response Plan to reflect the Project expansion as of October 31, 2003, which was a condition of the AEUB construction approval.

Mr. Fyfe stated that the entire Project had to be completed before any of the loops could become capable of transmitting any additional oil for Syncrude. Any additional flow volume in any one segment of the pipe must be accommodated in other segments of the pipe since the existing System was already operating at or near capacity pressure and flow rate.

Under questioning, Mr. Fyfe opined that Colt, O.J. Pipelines, Petro-Line, and VECO were reputable firms in pipeline construction, that successful hydrostatic pressure tests demonstrated that Lines 253 and 255 could withstand 125 percent of the design capacity and that caliper pig runs disclosed no problems with Line 253 or Line 255.

Under questioning, the MGB asked Mr. Fyfe about his opinion of the Corridor Order's finding that the status of pumping stations is a relevant consideration when determining a pipeline's ability to be used to transmit oil. He distinguished the Corridor system as a "grass-roots" pipeline system with new pumps for the system. In contrast, the Project involved twinning an existing

pipeline with existing functional pumps. Therefore, the existing pumps could be used to achieve some flow through the system, but not the ultimate capacity.

Consistency with Previous Board Orders

The Complainant submitted that the Court of Appeal's decision in Alliance now provides binding authority to compel a zero assessment; however, consistency with previous Board Orders would require the same result in any event. The facts of this complaint are analogous to those of the Corridor Order and, if anything, the subject properties were less capable at the relevant date. Fairness requires the MGB to apply principles consistently; hence it should order a zero assessment for the subject properties. Reference was made to the case of Alberta (Municipal Affairs) v. Telus Communications Inc., [2002] ABCA 1999, wherein Justice Berger stated that "Matters assigned to the Board for decision are important and complex and must be resolved with consistency."

Respondent's Position as to Capability of Use

The Meaning of "Capable of Being Used"

The Respondent's first line of argument was that a pipeline is capable of being used to transmit oil once it has been welded into a continuous string of pipe and pressure tested, thus meeting the requirements of section 28 of the Pipeline Regulation. Further argument was submitted after the release of the Alliance decision of the Court of Appeal.

The Respondent agreed that according to the Court of Appeal, a pipeline is not capable of being used until it is "ready to go". However, this stage occurs when:

- the pipeline has received the basic safety and systems testing to ensure that the public and environment are not at risk when it does move to full capacity;
- the commissioning process has reached the point that the public and environment are not compromised; and
- commercial transmission of gas through the main line is possible, even if not to full design capacity.

Furthermore, a pipeline may be "ready to go" even though,

- full line capacity is not yet achieved;
- further calibration or adjustments are required;
- the commissioning process is not yet completed;
- full commercial and design capability have not yet been achieved; and
- some of the intended senders are not connected to the pipeline.

The Respondent submitted that the "ready to go" test does not require actual commercial transmission, but only that such use be feasible. Thus, the Court of Appeal indicated that a pipeline could have commercial capacity when

> … commercial transmission of gas through the main line is possible. In such a case, the pipeline would still be assessable because commercial transmission would be possible, even if not to full design capacity.

The Respondent submitted that the MGB must apply its technical and specialized knowledge of assessment to the evidence disclosed at the hearing to determine whether the Lines 253 and 255 were capable of being used. The Court of Appeal has previously recognized the MGB's technical and factual expertise in the area of property assessment. For example, in Alberta (Municipal Affairs) v. Telus Communications Inc. 2002 ABCA 199 – which the Court of Appeal's decision in Alliance did not contradict, but merely distinguished - the Court said:

> The Board's expertise in the field of property assessment should, in my opinion, have attracted more deference. The Board's decision was not based upon a strict technical analysis of statutory and regulatory definitions. The record makes clear that it applied its expertise to assess the economic and operational realities which, in turn, impacted upon its interpretation of the enactment. The Board's decision is properly characterized as a question of mixed law and fact. The Board in my opinion was uniquely equipped to assess the factual context … .

The Respondent argued that the MGB understands the distinction between various types of linear and other property for assessment purposes, as well as the relevant valuation standards, tests and supporting rationales. It has also heard significant testimony concerning the meaning of "pipeline", the purpose of pressure testing, pipeline safety, the extent of commissioning, and other related matters.

Lines 253 and 255 were Capable of Being Used to Transmit Oil

The Respondent submitted that the subject properties meet the "ready to go" test established by the Court of Appeal. The AEUB is charged with ensuring safe pipeline construction and operation, and section 28 of the Pipeline Regulation allows pipeline operation after successful pressure testing. Furthermore, there is no dispute that all tie ins were completed and inspected and both loops successfully pressure tested as of October 31, 2003. No further safety tests were required under the provincial legislative scheme to safeguard public and environmental safety. Therefore, Lines 253 and Line 255 were capable of safe, commercial transmission of oil and meet the "ready to go" test set by the Alberta Court of Appeal.

The Respondent also submitted that the subject pipelines are distinguishable from Alliance on the facts. One factual difference is that the Alliance Pipeline was federally regulated, whereas Lines 253 and 255 are provincially regulated. Another difference is that the Alliance Pipeline

was a unique high pressure "bullet line" where all transmission would stop if something should go wrong; on the other hand lines 253 and 255 are simply loops on an existing operating pipeline. The Court of Appeal's decision in Alliance that transmission of test gas did not show capacity for safe commercial use does not entail that actual transmission is necessary for lines 253 and 255.

In further support of its position, the Respondent pointed to the evidence of Mr. Moffat and Ms. Uttley as summarized below.

Mr. Moffatt noted the subject properties had been put together to form a continuous string of pipe from the flange of the stopple-tee at one end of the loop to the corresponding flange at the other end of the loop and had sufficient physical integrity as confirmed by the pressure tests. The significance of pressure testing is that it demonstrates that the pipeline has sufficient strength to maintain its integrity and is free from leaks at pressures significantly greater than the maximum operating pressure. Therefore, the pipeline can operate safely and without risk to the environment. As such, Line 253 and Line 255 satisfied all physical and regulatory requirements for being capable of use for transmission.

Mr. Moffatt believed that the subject pipeline loops were safe for use. He was adamant that the quality, integrity and safety of a pipeline is "built-in," as opposed to confirmed by tests during commissioning or operation. Pipelines are a mature and reliable technology, subject to extensive legislative oversight, designed by ethics-bound engineers and constructed by a sophisticated industry. Accordingly, pipelines are constructed with the full confidence and reasonable expectation that they will embody quality and integrity and be capable of being used for transmission of oil. Mr. Moffatt noted that the Complainant retained a highly-competent, experienced and professional pipeline engineering firm to design and manage the construction of the Project, specialist contractors to construct it and numerous inspectors to assure the quality of each stage of construction. Also, the subject property successfully passed the caliper pig test in addition to the pressure test. Further, the responsible engineers conducted the line fill even though four mainline valves were not communicating with SCADA.

Mr. Moffatt believed that the factors indicating the completion of the pipelines are also applicable to determining whether it was capable of being used to transmit oil.

Mr. Moffatt submitted that the fact that the hot-tap procedure had not been performed as of October 31, 2003 did not preclude Lines 253 and 255 from being capable of transmitting oil. It was not Lines 253 and 255 that were plugged, so to speak, but rather the existing System pipe.

Mr. Moffatt characterized Mr. Fyfe's submissions on capability of use as bearing only on operational issues (e.g. measurement and control), pipeline system matters (e.g. SCADA and leak detection) and commissioning. In particular, Mr. Fyfe's reluctance to "sign off" on Line 253 and Line 255 at the post-expansion flow rate concerned actual operation at design capacity, not capability of use.

Mr. Moffatt agreed with Mr. Fyfe that all loops must be installed on a pipeline before the flow capacity of a pipeline system can be increased. Mr. Moffatt noted, however, that completion of only some loops is still beneficial because it reduces the required pumping power, operating costs and the risk of overpressure by transient events.

Mr. Moffatt stated that Mr. Fyfe's concern about over-pressuring the Original Pipeline was irrelevant because it is not the subject property. Moreover, if anything, Line 253 and Line 255 diminished the risk of over-pressuring the Original Pipeline. There was no risk of over-pressuring Line 253 or Line 255 because they were more robust and stronger that the System pipeline. Ultimately, there was nothing to cast doubt on the integrity of Line 253 and Line 255 and their capability to transmit oil. Mr. Moffatt was also unaware of any statutory provision in Alberta requiring an engineer to certify the safety of a pipeline.

Mr. Moffatt indicated that the AOSPL emergency response was a corporate response plan. Emergency response plans are not legislatively required for low vapour pressure pipelines, such as Line 253 and Line 255.

Under questioning by the Respondent, Mr. Moffatt indicated that the minimum requirements of sections 6(2) and 28 of the Pipeline Regulation had been completed before October 31, 2003. He was not clear as to whether the minimum requirements of section 6(3) of the Pipeline Regulation with respect to leak detection had been completed to fulfil legal obligations. Nevertheless, he indicated that the Pipeline Regulation prescribed standards for operation of a pipeline, not capability for use.

Ms. Uttley submitted that Lines 253 and 255 were capable of being used to transmit oil as of October 31, 2003. The lines had been successfully pressure tested and could hold oil.

Previous Decisions are not Determinative

The Respondent submitted that the Alliance and Corridor Decisions of the Court of Appeal and the Court of Queen's Bench have limited impact concerning the assessability of Lines 253 and 255. Furthermore, as indicated in relation to completeness, fairness requires the MGB to decide the current complaint on its own merits, evidence and current understanding of the legislation, rather than be bound by the Alliance Order and Corridor Order.

Similarly, the factual differences identified earlier between the circumstances of the Alliance and Corridor complaints and the present complaint must also be considered in relation to capability.

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, the MGB finds the facts in the matter to be as follows.

1. Lines 253 and 255 were continuous strings of pipe with sources and endpoints at the valve locations indicated on their AEUB licences. Hence, they are "pipelines" for the purposes of section 284(1)(k)(iii).

2. SCADA and leak detection systems were not functioning or fully tested as of October 31, 2003.

3. Functioning SCADA and leak detection systems were necessary to ensure that commercial operation of the AOSPL loops could occur without risk to public safety and the environment.

Decision as to Capability

Lines 253 and 255 were not "capable of being used" for the purposes of section 291(2)(a) of the Act as of October 31, 2003.

Reasons

The Meaning of Capable of Being Used

As previously noted, section 291(2)(a) indicates that no assessment is to be prepared for property that is under construction but not complete,

> … unless it is capable of being used for the transmission of … oil … .

Moreover, the Alberta Court of Appeal has now indicated that the MGB will be held to a "correctness" standard of review when interpreting this provision, and has commented extensively on the purpose and correct interpretation of this section. These comments include the following statement also quoted in Part I - D of this Order.

> The interpretation of paragraph 291(2)(a), therefore, and, in particular, the interpretation of the phrase "capable of being used for the transmission of gas," must take into account the overall legislative goal of providing tax relief, while at the same time respecting the Legislature's desire for limitation. In my view, by drafting the statute in the way that it has, the Legislature intended that those who are still in the process of constructing and completing linear property will not be eligible for tax assessment, under the general taxing provisions, unless the

> property is **capable of being used for its intended purpose** on the statutory date of assessment.

Furthermore, a pipeline will be capable of being used for its intended purpose when it is "ready to go".

> In my view, the Legislature intended that a pipeline be assessable when it is "ready to go". At this stage, while full line capacity may not yet have been achieved, the pipeline has completed the basic safety and systems testing to ensure that the public and the environment are not at risk when the pipeline moves to full line capacity. This is not to say that that no further calibration or adjustments are required – these will be on-going throughout the life of the pipeline – but that the commissioning process has reached the point that the public and the environment are not compromised. It is also the point that the pipeline can be used commercially, which is the ultimate purpose behind the pipeline's construction. It is only at this point, when the pipeline is capable of safe, commercial transmission of gas, that a pipeline company such as Alliance has the ability to use the property for its intended purpose.

In view of the above, the MGB must determine whether the evidence now before it is sufficient to establish that Lines 253 and 255 were not yet capable of use for their intended purpose: namely, the safe, commercial transmission of oil to create increased transmission capacity from Mildred Lake to Edmonton.

Capability in Relation to the Current Fact Scenario

Relevant evidence presented at the hearing concerned pressure testing, pumping capability, line fill, wet commissioning and performance testing, hot tap tie ins, and the status of SCADA, Leak Detection, and control systems.

- Pressure testing: There was no dispute that hydrostatic testing was complete.
- Pumping Capability: Some pumping capacity was available, although further pumps were planned to bring transmission up to capacity. Thus, in answer to an MGB question as to whether pumping capacity had to be in place for capacity to transmit, Mr. Fyfe indicated at page 320 of the transcript:

  > … I don't believe so. Had this been a totally new grass-roots pipeline system, such as Corridor, they had new pumps for their new pipeline. In our case, we were twinning an existing pipeline, and that existing pipeline already had pumps on it. So although we could not have reached ultimate capability that we were planning for until we brought the Syncrude pumps and our – the new pumps that we put in also at the Syncrude site, in that sense, those pumps were not ready. So in order to reach the ultimate capacity of the system, there

> wasn't enough pumps complete. But to achieve some flow through the system, we could use the existing pumps.

- Hot tap tie ins: There was no dispute that hot tap tie ins had not yet occurred to allow oil to flow into the loops.
- Line-fill and wet commissioning: There was no dispute that line-fill and wet commissioning had not yet occurred.
- Usable SCADA and Leak Detection (LD) systems: The MGB accepts the evidence of Mr. Fyfe that the SCADA and LD systems were not yet operational as of October 31, and that remote control capability was also not yet established.
- Performance testing and commissioning sign off: Without line-fill, there was no opportunity for performance testing or commissioning sign off.

The evidence in relation to the pipelines' ability to transmit oil is thus mixed. On the one hand, it is clear that as of October 31, 2003, Lines 253 and 255 connected viable sources and destinations at points along the existing pipeline system. Furthermore, pressure testing was complete and additional pumps were not required for a significant degree of flow (although additional pumping ability was planned to reach capacity). On the other hand, hot tap tie ins were not yet performed and line fill had not begun. Consequently, neither the loops nor their appurtenances had been tested with product flow. Similarly, the SCADA and Leak Detection systems were not yet tested or operational, and commissioning sign off had not occurred.

The question is whether these circumstances are sufficient to establish that the AOSPL loops were not yet capable of the "safe commercial transmission of oil" for which the loops were intended. While the expert witnesses called to assist the MGB did not comment directly on the Court of Appeal's interpretation of 291(2)(a), expert opinion conflicted as to the capacity of the subject loops for safe operation on October 31, 2003. On the one hand, the Complainant's expert, Mr. Fyfe, concluded that neither line was "capable of being used" because neither was safe or lawful to operate.

> In addition to the total inability for the oil to flow from A to B, there is also, as I mentioned, leak detection requirement identified under the pipeline regulations. That capability requires a working RTU system, a SCADA system, as well as the necessary program and design of the leak detection system. None of that had been completed or was in place. So without those in place, it would be unsafe and unlawful to operate the system. (page 129 of transcript)

On the other hand, the Respondent's expert engineer, Mr. Moffat, took the opposite view:

> Capability of use was known to be there. Everything was there … . It had successfully passed every test; the pressure test and the additional calliper pig test, which is not mandated. And those are the only tests that are mandated by regulation … . It was a pipe. Known integrity. Continuous end to end of proven

> quality and it had passed pressure testing. Every single piece in it. There was no expectation of any defect or deficiency in any part of it. It was capable. (page 385-386 of transcript)

The MGB's view is that while testing with product flow could begin safely before the SCADA and RTU devices were functioning and communicating properly, it cannot be said that the AOSPL loops were capable of "safe commercial transmission" of product. In this connection, the MGB notes Mr. Fyfe's evidence that functioning RTUs are required to avoid over pressuring the existing Pipeline and to relay data for the leak detection system (page 145 of the Transcript).

> In general, regarding the RTUs for this project, and this is true of Lines 251, 252, 253 and 255, these pipelines are larger and stronger than the existing 22 inch pipeline and it requires careful monitoring and flow control using pressure transmitters and valve status indicators to ensure that the 22-inch pipeline isn't overpressured. This is done using sophisticated programming of the control systems to receive regular telemetry from the RTUs and to be able to return commands once the SCADA system has determined how best to respond. And those commands would involve perhaps closing valves or turning off pumping equipment. This is necessary to safeguard the existing 22 inch pipe from over-pressure
>
> The RTU also relays the important data that's required for the leak detection system …

The evidence is clear that as of October 31, 2003, the APSPL loops' RTUs were not functioning and communication and remote valve control were not yet fully established. Commissioning of the main-line block valves and performance and safety testing with product flow had not yet occurred to any degree. The MGB is satisfied that without having completed at least some of these activities, the builders of Loops 253 and 255 had not "completed the basic safety and systems testing to ensure that the public and the environment are not at risk" when the lines "move to full line capacity". This finding is consistent with both the Alliance and Corridor Orders, where the MGB's reservations as to safe and effective pipeline operation stemmed from similar circumstances. In Alliance, the MGB's reservations ultimately grounded the Court of Appeal's conclusion that the Alliance Pipeline was not "capable of being used to transmit oil" despite actual transmission and sale of billions of cubic feet of test gas.

In reaching its conclusion, the MGB is mindful of the distinctions between the AOSPL loops and the Corridor and Alliance pipelines. Notably, the Complainant's loops are shorter adjuncts to an existing pipeline that has been operating for decades, and their intended purpose is not simply to carry commercial quantities of oil, but also to expand the capacity of the Original Pipeline. The source and destination of the loops are also of a different nature, being valves along the Original Pipeline where product is already flowing, as opposed to producing or processing facilities as with Alliance and Corridor. Nevertheless, the loops are pipelines of significant size designed to

carry large quantities of oil over tens of kilometres. The MGB is satisfied on the evidence that further testing and commissioning activities on pipeline components such as RTUs were required to ensure that important monitoring, control and safety systems were in operation. Without these systems in place, neither loop could be used to increase the capacity of the Original Pipeline through the safe commercial transportation of oil. Consequently, the loops were not "capable of being used" within the meaning of section 291 of the Act as of October 31, 2003.

DECISION AS TO ASSESSMENT

In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision.

The complaint in respect to the assessment is allowed and the assessment is set at $0 for LPAU-ID 2122895, LPAU-ID 2122898 and LPAU-ID 2122899.

PART II: JURISDICTIONAL ISSUE: *ULTRA VIRES* ASSESSMENT

The MGB has found that Lines 253 and 255 were not completed construction or capable of being used to transmit oil as of October 31, 2003. Therefore, no assessment should have been prepared for these pipelines regardless of the scope for delegation of assessment duties. Nevertheless, the question of delegation was fully argued; furthermore, the MGB is unaware of any previous order disposing finally and directly with precisely the same issue. Therefore, the MBG considered it useful to record its views on the matter and has done so below.

BACKGROUND

In Alberta, approximately 70,000 notices of assessments for linear property were prepared for the 2004 tax year, involving approximately 400,000 individual accounts and a total assessment value of $38 billion. These properties are valued according to their status indicated in AEUB records and legislated standards set out in the Minister's Guidelines.

In 2004, the task of preparing these assessments fell upon a staff of eleven persons, including five assessors in the Linear Property Assessment Section (LPAS) at the Assessment Services Branch (ASB) of Alberta Municipal Affairs (AMA). The assessment calculation is automated and based on data obtained from the Alberta Energy and Utilities Board (AEUB); however, assessors also request certain information from pipeline operators to determine whether a pipeline is complete or capable of being used since AEUB "operational" status is not determinative of this matter.

In January 2004, Mr. Steve White solely held the position of Designated Linear Assessor (DLA) and Executive Director of the ASB. Ms. Chris Uttley held the position of Operations Manager and Appeal Coordinator of the LPAS. She is qualified as an Accredited Municipal Assessor of Alberta (AMAA). Mr. Harold Williams was her immediate supervisor.

During her employment, Ms. Uttley and Mr. Williams prepared a document entitled "Performance Planning System Part I". This document outlined Ms. Uttley's expected responsibilities for the 2003 fiscal year (April 1 to March 31) to fulfil the AMA's goal of a well-managed and efficient assessment and property tax system. Among fifteen listed responsibilities, the first was to "prepare and disseminate a quality linear property assessment by January 31, 2004". Mr. White, Mr. Williams and Ms. Uttley all personally signed this document.

By letter dated November 20, 2003, the ASB sent the Complainant a request for information to prepare an assessment for the subject properties. The request bore the electronic signature of Mr. White, in the capacity of the DLA. Correspondence ensued between Ms. Uttley and an employee of the Complainant regarding the assessment. In February 2004, Ms. Uttley prepared the assessment of the subject properties for the 2004 tax year. The assessments are dated February 13, 2004 and bear the electronic signature of Mr. White in the capacity of the DLA.

In MGB Decision Letter 017/05 the MGB declined the Complainant's request to order disclosure of documents pertaining to delegation of authority of Ms. Uttley in her work as a linear assessor. During the merit hearing, the Complainant revisited the issue of *ultra vires* assessment when questioning Ms. Uttley. The MGB adjourned the hearing on March 10, 2005 to permit the parties to prepare and present submissions on the matter after reconvening April 11, 2005. In its oral submissions, the Respondent indicated its intention to seek costs for this jurisdictional application at the conclusion of this matter.

ISSUES

The jurisdictional issue is whether the assessment of the subject properties is *ultra vires* because of an unlawful or imperfect sub-delegation of the statutory authority to assess linear properties by the DLA, Mr. White, to the assessor of the subject properties, Ms. Uttley. The MGB resolved this issue by identifying the following sub-issues.

1. Did the Alliance and Corridor decisions of the Court of Appeal and Court of Queen's Bench decide the issue of sub-delegation?
2. Does the Act confer authority on the DLA to sub-delegate the authority to prepare assessments for linear property?
   (a) Does paragraph 284(1)(d) of the Act expressly confer authority on the DLA to sub-delegate the authority to prepare assessments of linear property?
   (b) Does subsection 292(1) of the Act conflict with paragraph 284(1)(d) of the Act?
   (c) If the answer to (b) is affirmative, which interpretation of the Act prevails?
   (d) In the alternative, is the DLA permitted to sub-delegate the preparation of linear property assessments by reason of administrative necessity?
3. If the answer to issue 2 is affirmative, did the DLA, in the person of Mr. White, in fact exercise that power of sub-delegation with respect to Ms. Uttley, the assessor of the subject properties?

(a) Is it necessary for the sub-delegation to be in writing?
(b) What is the effect of Mr. White's electronic signature on the notice of assessment for the subject properties?

4. If the answer to issue 2 is negative, did Mr. White properly exercise his statutory authority to prepare the assessment of the subject properties by reason of his electronic signature being affixed to the request for information and the notice of assessment?
5. If the answers to issue 2 and 4 are negative, what is the effect on the assessment of the subject properties?

LEGISLATION

In order to decide this matter, the MGB examined the following relevant sections of the Act.

Municipal Government Act

Paragraph 284(1)(d) of the Act defines an "assessor" for the purposes of Parts 9 to 12.

284(1) In this Part and Parts 10, 11 and 12,
(d) "assessor" means a person who has the qualifications set out in the regulations and
(i) is designated by the Minister to carry out the duties and responsibilities of an assessor under this Act, or
(ii) is 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); … .

Subsection 289(1) of the Act confers the duty of preparing non-linear property assessments on the "assessor appointed by the municipality".

289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.
(2) Each assessment must reflect
(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
(b) the valuation standard set out in the regulations for that property.

Section 291 requires that an assessment be prepared for property whether or not it is complete or capable of being used for its intended purpose and outlines certain exceptions to this rule for linear property and certain new improvements.

291(1) Unless subsection (2) applies, an assessment must be prepared for an improvement whether or not it is complete or capable of being used for its intended purpose.
(2) No assessment is to be prepared

(a) for linear property that is under construction but not completed on or before October 31, unless it is capable of being used for the transmission of gas, oil or electricity, … .

Section 292 indicates assessments of linear property must be prepared by an assessor designated by the Minister.

292 (1) Assessments for linear property must be prepared by the assessor designated by the Minister.
(2) Each assessment must reflect
(a) the valuation standard set out in the regulations for linear property, and
(b) 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, as contained in
(i) the records of the Alberta Energy and Utilities Board, or
(ii) the report requested by the assessor under subsection (3).
(3) If the assessor considers it necessary, the assessor may request the operator of linear property to provide a report relating to that property setting out the information requested by the assessor.
…
(5) If the operator does not provide the report in accordance with subsection (4), the assessor must prepare the assessment using whatever information is available about the linear property.

Subsection 293(1) provides how the assessors must prepare assessments.

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

Subsection 296(1) empowers the assessor designated by the Minister to apply to the Court of Queen's Bench for orders for inspection and enforcement.

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.

***Interpretation Act* (Alberta)**

The MGB examined whether or not Section 21 of the *Interpretation Act* was relevant to the disputed issue of sub-delegation.

21(2) Words in an enactment directing or empowering a person to do something, or otherwise applying to the person by the person's name of office, include
(a) a person acting for that person or appointed to act in the office, and
(b) that person's deputy or a person appointed as that person's acting deputy.
(3) This section applies whether or not the office of a Minister or other person is vacant.

***Qualifications of Assessors Regulation,* Alta. Reg. 54/1999 (Qualifications Regulation)**

In addition the MGB examined Section 2 of the Qualifications Regulation, which prescribes the requisite qualifications of "assessors".

2 No person is eligible to be an assessor within the meaning of section 284(1)(d) of the Act unless the person

- *(a) is registered as an accredited municipal assessor of Alberta (AMAA) under the Municipal Assessor Regulation (AR 84/94),*
- *(b) holds the designation Certified Assessment Evaluator (CAE) issued by the International Association of Assessing Officers,*
- *(c) holds the designation Accredited Appraiser Canadian Institute (AACI) issued by the Appraisal Institute of Canada, or*
- *(d) has qualifications or experience or a combination of qualifications and experience that, in the opinion of the Minister, is equivalent to one or more of the qualifications referred to in clauses (a) to (c).*

ISSUE 1: Did the Alliance and Corridor decisions of the Court of Appeal and Court of Queen's Bench decide the issue of sub-delegation?

Summary of Complainant's Position

The Complainant submitted that the Alberta Court of Appeal and the Alberta Court of Queen's Bench decisions in Alliance and Corridor confirm that assessments must be prepared by the "Designated Linear Assessor" (DLA). For example, Justice Lefsrud stated in his decision that

> Linear property must be assessed by a provincial Official, the Designated Linear Assessor … .

Such statements constitute binding precedent and compel the conclusion that linear assessments prepared by someone other than the DLA are invalid.

Summary of Respondent's Position

The Respondent submitted that the issue of delegation did not arise in either the Alliance or Corridor decisions; hence the comments of Courts cannot be considered anything but obiter dicta in this regard.

Decision Concerning Issue 1

The decisions of the Court of Appeal, the Court of Queen's Bench regarding the Alliance and Corridor Orders did not decide the issue of subdelegation.

Reasons

Having reviewed the decisions of the Court of Appeal, Court of Queen's bench and the MGB regarding Alliance and Corridor, it is evident that improper delegation of authority was neither argued by the parties nor considered by the any of the panel members or justices who rendered the decisions. Essentially, the comments of the Courts relied on by the Complainant merely describe or re-iterate 292(1), which says that "assessments must be prepared by the assessor designated by the Minister". These comments provide no guidance as to the interpretation of section 291 in the context of an argument concerning improper subdelegation.

ISSUE 2: Does the Act confer authority on the DLA to sub-delegate the authority to prepare assessments for linear property?

Summary of Complainant's Position

The Complainant submitted that the assessment of the subject property was *ultra vires* because the DLA, Mr. White, lacked statutory authority to sub-delegate his assessment duties to Ms. Uttley. In support of its position, the Complainant relied on several principles of statutory interpretation. First, tax legislation should be interpreted in its entire context and in its grammatical and ordinary sense, harmoniously with the scheme of the Act and the intention of the legislator. Second, a specific legislative provision overrides a more general one within the same statute. Third, any remaining doubt as to the correct interpretation of taxation legislation using ordinary rules of construction should be resolved in favour of the taxpayer. Reference was made to C.U.Q. v. Corp. Notre-Dame de Bon-Secours (S.C.C.), Re Assessment Equalization Act (B.C.S.C.), Goodyear Tire and Rubber Co. of Canada Ltd. et al v. Babiak (Man. Cty. Ct.) and Driedger's Construction of Statutes, 2nd ed.

The Complainant submitted that sub-delegation is presumptively impermissible when the legislation confers power on a specific person unless the language, scope or object of the empowering legislation dictates otherwise. Reference was made to Ramawad v. Minister of Manpower and Immigration (S.C.C.), Quebec (A.G.) v. Carrieres Ste-Therese Ltée. (S.C.C.) and Holland and McGowan, Delegated Legislation in Canada. In this regard, the wording of section 292(1) of the Act clearly provides that assessments of linear property must be prepared by the assessor designated by the Minister. This provision applies specifically to linear property assessment and overrides the delegation power suggested by section 284(1)(d), which applies generally to assessment under Parts 9 through 12 of the Act. Deciding otherwise would render

section 292(1) redundant. Ultimately, if the MGB must choose between two valid interpretations, it should choose the interpretation favourable to the taxpayer.

In reply to the Respondent's argument that the ability to subdelegate is implied under the Act, the Complainant submitted there was no evidence that the DLA faced so onerous a workload that he could not personally assess the subject properties. If so, the proper action would be for the Minister to designate more than one assessor to prepare linear assessments. For instance, under the *Alberta Environmental Protection and Enhancement Act*, the Minister of Environment has appointed more than one Director of Environment even though that statute refers to that office in the singular.

The Complainant submitted that section 21(2) of the *Interpretation Act* is not applicable. First, Ms. Uttley was appointed neither in an acting capacity for Mr. White, in the sense of filling in for a temporary absence, incapacity or vacancy, nor as his deputy, in the sense of exercising the powers of a principal. Second, applying section 21(2) of the *Interpretation Act* in the manner suggested by the Respondent would render section 292(1) of the Act superfluous.

The Complainant argued that distinction between adjudicative and administrative decisions is not relevant to determining whether sub-delegation is permissible, as suggested by Jones and de Villars. The real question is whether the discretion should be personally exercised by the delegate. If so, a strong presumption against sub-delegation exists, regardless of the function's appellation. Reference was made to the Supreme Court of Canada decisions Pushpanathan v. Canada (Minister of Citizenship and Immigration) and U.E.S., Local 298 v. Bibeault.

The Complainant argued that Ramawad is a closer analogy to the present case than the R v. Harrison relied on by the Respondent; moreover, Ramawad distinguished Harrison because the scheme of the empowering statute in the former case was interpreted to prohibit sub-delegation. Finally, the Complainant argued that the Peralta, Eastbrook Sand and Spicer cases (infra) are inapplicable because the express language of the Act precludes any inference of sub-delegation by administrative necessity.

Summary of Respondent's Position

The Respondent submitted that the starting principle of statutory interpretation is internal coherence. Read harmoniously, sections 284(1)(d) and 292(1) expressly authorize the DLA to sub-delegate the power to qualified persons to prepare assessments for linear property. Paragraph 284(1)(d) of the Act refers to the DLA in the singular. Yet, it recognizes that the DLA cannot personally discharge all assigned duties under the Act by defining an assessor to include "any person to whom those duties and responsibilities are delegated by the person referred to in subclause (i)", i.e. the person designated by the Minister. In section 292(1), the word "prepare" refers to the DLA's ultimate legal responsibility for linear assessments, not a literal responsibility to assess all linear properties in Alberta.

Alternatively, the Respondent submitted that the sub-delegation is permissible under the principle of administrative necessity. That is, powers of a named delegate may well be exercised by civil servants given the exigencies of modern government, even though the delegate bears ultimate political responsibility. Reference was made to R. v. Harrison (S.C.C.) and Re Peralta and the Queen (Ont. C.A.). The Complainant distinguished the Ramawad case as concerning an exercise of adjudicative powers. The Complainant also referred to section 21(2) of the Interpretation Act and its consideration by the Alberta Court of Appeal in R. v. Eastbrook Sand and Gravel Ltd. and R. v. Spicer and Blakely, and by Jones and De Villars, Principles of Administrative Law, 3rd ed.

Ms. Uttley testified that every account that has an AEUB status of "operational" must be scrutinized to determine its degree of assessability. Information is requested with respect to properties when their AEUB status changes from permitted to operational for the first time. In 2003, there were between two-thousand and three-thousand individual pipeline properties of that kind. As the manager, Ms. Uttley was the sole person with authority to approve those assessments, unless she was ill or absent, but relied upon the assistance of junior assessors.

Decision Concerning Issue 2

2. (a) Paragraph 284(1)(d) of the Act confers authority on the DLA to sub-delegate the authority to prepare linear property assessments of linear property to assessors having the qualifications set out in the Qualifications Regulations.
   (b) Subsection 292(1) of the Act does not conflict with paragraph 284(1)(d) of the Act.
   (c) Alternatively, the DLA is permitted to sub-delegate the preparation of linear property assessments by reason of administrative necessity.

Reasons

The Act Expressly Permits the DLA to Sub-Delegate

The MGB considered the authorities submitted by the parties and finds the salient principles as follows. The Supreme Court of Canada in Notre-Dame de Bon-Secours enunciated the following rules for the interpretation of taxation legislation. First, tax legislation should be interpreted according to the ordinary rules of interpretation. One such rule is that a specific provision prevails over a general one in the same statute. Second, the strictness or liberalness of the interpretation of a provision depends on its underlying purpose, as determined by the context of the statute, its objective and legislative intent. Third, substance should preside over form to the extent that it is consistent with the wording and objective of the statute. Fourth, a residual presumption in favour of the taxpayer will be used to settle only reasonable doubts not resolved by the ordinary rules of interpretation. Parenthetically, it should be noted that this case interpreted an exemption provision of tax legislation, not an issue of delegation, and as such is not entirely on point.

The MGB is of the opinion that the application of these principles indicates that paragraph 284(1)(d) of the Act expressly authorizes the DLA to sub-delegate the preparation of linear property assessments to an assessor having qualifications set out in the Qualifications Regulations. Furthermore, this provision may be read harmoniously with subsection 292(1).

The language of section 284(1)(d) of the Act clearly contemplates two types of assessor in the linear property regime: the DLA and sub-delegates of the DLA's statutory duties and responsibilities. Section 292(1) identifies the preparation of linear property assessments as one of the DLA's responsibilities, but the phrase "assessor designated by the Minister" seemingly prohibits the sub-delegation of this particular responsibility.

That, however, is not the end of the matter. Following Notre-Dame de Bon-Secours, the MGB is to apply ordinary rules of construction and consider the strictness or liberalness of the provision, based on the purpose of the provision, as determined by the context of the Act, its objective and legislative intent.

An ordinary rule of construction is that statutory definitions should be read subject to their qualifications in the definition clauses which create them. As such, "assessor" in subsections 292(3), 292(5) and 293(1) should be interpreted to include sub-delegates of the DLA. Also, the Minister's Guidelines adopt the definition of "assessor" used in the Act. If, however, the Complainant's interpretation of subsection 292(1) were correct, then the Act would have the peculiar effect of denying sub-delegates the power to assess linear property while authorizing sub-delegates to request information considered necessary for preparing assessments and instructing sub-delegates how to prepare linear property assessments. The MGB does not accept that a sub-delegated assessor can determine whether information is necessary to prepare an assessment or apply specific valuation standards in the Minister's Guidelines without actually preparing the assessment himself or herself.

Another ordinary rule of construction is that the legislature is assumed to be aware of its own distinctions. In that regard, subsection 296(1) specifically confers the power to apply for court orders for inspection or enforcement on an "assessor described in section 284(1)(d)(i)". Arguably, this language requires the DLA to personally exercise this power. If the legislature had intended the DLA to personally prepare linear property assessments, language with the same degree of specificity could have been employed in subsection 292(1). It was not. Moreover, the resulting distinction in subsections 292(1) and 296(1) makes good sense. The preparation of linear property assessment is an ordinary power of assessors, whether designated or sub-delegated. In contrast, the authority to seek restraint and production orders with compulsive effects on property operators is an unusual power, which the legislature intended to reserve in an individual directly designated by the Minister.

The MGB finds that the purpose of subsection 292(1) is to confer the responsibility of assessing linear properties to assessors (including sub-delegates) under the auspices of the Minister, rather than assessors (including sub-delegates) under the auspices of the municipalities.

This purpose is evident upon considering the context and purpose of the Act. In Parts 9 to 12, the Act differentiates between the treatment of non-linear properties and linear properties for the purposes of assessment and taxation. Generally, non-linear properties are subject to persons and bodies with a municipal scope whereas the linear properties are subject to bodies and persons with a provincial scope. One ostensible reason is that the value of non-linear properties is typically determined wholly in reference to the market conditions of a single municipality whereas the value of linear properties is subject to provincial AEUB regulation. As such, the legislature has established a distinct assessment regime for linear properties. This accords with the overall purpose of Parts 9 to 12 of the Act of establishing and implementing an effective, efficient and fair property taxation regime.

In this context, the phrase "as designated by the Minister" in subsection 292(1) may be regarded as a qualifier which parallels the qualifying phrase "as appointed by the Municipality" used in subsection 289(1). These two provisions, which are parallel in language and structure, maintain the distinct treatment of non-linear and linear properties. Interpreted in this way, the words of section 292(1) are given full effect in a manner that is harmonious with section 284(1).

Alternatively, the Act Implicitly Permits the DLA to Sub-Delegate

Even if one were to conclude that the Act does not expressly permit the DLA to sub-delegate linear property assessment, such permission is certainly implied.

As regard to the law of delegation, the maxim *delegatus non potest delegare* is a rule of construction to which exceptions apply having due regard to the language of the legislation, its purposes and objects. In Harrison, the Supreme Court of Canada recognized that a power to sub-delegate may be implicit in the legislative scheme where it is unreasonable to expect the delegate to personally exercise its duties and it is supposed that the delegate will appoint qualified officers to act on his or her behalf. Thus, the signing of a notice of appeal in a criminal case by Crown counsel was valid even though he received instruction from a departmental official rather than the Attorney General, as required by literal wording of the statute. In Ramawad, the same court commented that the implicit power spoken of in Harrison depends on legislative intent as derived from the language of the statute and the subject matter of discretion. Thus, the Minister had to personally waive the requirement of an employment visa in the existence of special circumstances because the statutory framework clearly recognized different officers and specified different levels of authority for each of them. Likewise, in Carrieres Ste-Therese, the same court found that the Minister was required to personally exercise discretionary powers in urgent circumstances because the legislation stated that the Minister may do so "himself." In contrast, the Ontario Court of Appeal in Peralta upheld the specification of quotas for thousands of fishermen by the Minister, even though the statute conferred regulation-making power on the cabinet; it was presumed that the legislature did not intend the Cabinet to do so. The court also commented that the suitability of the sub-delegate was a material factor in determining whether sub-delegation was intended.

In particular, the quality of the delegated function is a relevant factor in determining the validity of its sub-delegation. Ramawad identifies the subject matter of discretion as one consideration in determining whether there is an implicit power of sub-delegation. Professor Holland recognizes the reluctance of the courts to uphold the sub-delegation of legislative functions. Similarly, Jones and de Villars recognize that courts are more prepared to accept sub-delegation of administrative functions than legislative or judicial functions, although they argue against mechanically applying any such rule. The MGB does not believe Bibeault and Pushpanathan render such distinctions irrelevant as contended by the Complainant. These cases concern the ascendance of the pragmatic and functional approach over the preliminary and collateral approach to substantive review of decisions by administrative tribunals. Moreover, one factor to be considered under the pragmatic and functional approach is whether the tribunal has an adjudicative or polycentric role – a consideration that is akin to the nature of the discretion.

The language and framework of paragraph 284(1)(d) and subsection 292(1) do not constitute an express prohibition against the sub-delegation of authority by the DLA. On the contrary, section 284(1)(d) expressly contemplates a sub-delegation of the DLA's duties and responsibilities without limitation. This is distinguishable from the Carrieres Ste-Therese case, in which the empowering statute provided that the Minister may "himself" exercise powers in urgent cases. It is also distinguishable from the Ramawad case, in which the empowering statute created a structure of delegates with different levels of authority in immigration matters. In the present case, paragraph 284(1)(d) defines "assessors" to be inclusive of sub-delegates so as to suggest a fluid overlap of statutory responsibilities and duties between the DLA and its sub-delegates. If there is any strong distinction between delegates identified the Act, it is as between assessors appointed by the municipalities and those designated by the Minister, not between these delegates and their respective sub-delegates. In this light, the word "must" appears in subsections 289(1) and 292(1) to emphasize the exclusive jurisdiction of assessors appointed by the municipality and their sub-delegates to prepare non-linear property assessments, and of the DLA and its sub-delegates to prepare linear property assessments.

The quality of the assessment responsibility also favours the permissibility of sub-delegation. Linear property assessment is arguably an administrative function rather than a legislative or adjudicative function. It involves the application of standardized assessment Guidelines to properties based on their particular characteristics. The assessor has virtually no discretion to deviate from the Guidelines such that the resultant assessments should in theory be the same regardless of the actual person exercising the power. It is an ordinary task to which all linear properties are subject. As such, this power is more analogous to the Minister's power in Peralta than the exceptional powers conferred on the Minister in Ramawad or Carrieres Ste-Therese.

The suitability of the sub-delegate also favours the permissibility of sub-delegation. Under section 2 of the Qualifications Regulation, "assessors" must possess qualifications from one of the named accrediting organizations or have equivalent qualifications and/or expertise. Notably, these qualification requirements pertain to assessment and are identical as between the DLA and

sub-delegates. The ostensible intention of the legislature was to ensure that all "assessors", whether designated by the Minister or sub-delegated, have the requisite training to prepare linear assessments. The MGB cannot accept that the legislature intended to regulate such specific qualifications for assessors and then prohibit them from preparing assessments.

The MGB is satisfied that the sub-delegation of linear property assessment is administratively necessary. It is reasonable to assume the legislature was cognisant of the potentially large numbers of linear properties in Alberta so as to empower sub-delegated assessors to assess linear property. The Act statutorily authorizes assessors to request information from property operators and enter on and inspect property which may be spread throughout the province. The magnitude of such work knows no bounds under the Act. As such, the MGB is satisfied that the legislature did not expect a single person in the capacity of the DLA to perform these duties.

The Complainant noted that Ms. Uttley herself appeared to be capable of personally managing all linear property assessments in Alberta and thus there was no administrative necessity for the DLA to sub-delegate linear property assessment. In Peralta, however, the court commented that the court "must find the right to subdelegate from the wording of the legislation itself and not from the manner in which the power is exercised." Conversely, the manner in which the power is exercised should not preclude the right to sub-delegate if it is supported by the wording of the legislation.

ISSUE 3: Did Mr. White in fact sub-delegate his authority to Ms. Uttley?

Summary of Complainant's Position

Even if Mr. White had had the authority to do so, he did not in fact sub-delegate his assessment duties to Ms. Uttley. Mr. White's signing of the Performance Plan was merely a formality of human resources administration.

A delegate does not properly exercise its statutory power if it fails to address its mind to the facts of a particular case, such as by instructing staff to affix his or her signature by way of stamp or manually signing by way of routine. Reference was made to Lloyd v. British Columbia (Superintendent of Motor Vehicles) (B.C.C.A.) and R. v. Leader Cold Storage Ltd. (B.C. Prov. Ct.). As such, Mr. White did not redeem his failure to properly exercise his discretion by affixing an electronic version of his signature to the assessment because he did not turn his mind to the assessment.

When decision-making power is improperly delegated and the person required to make the decision fails to do so, but delegates that responsibility to another, that decision is invalid. Reference was again made to Ramawad and Leader Cold Storage Ltd. For the reasons above, the assessment of the subject properties is invalid.

Summary of Respondent's Position

The Respondent submitted that sub-delegation by the DLA need not be evidenced in writing. First, no such requirement exists in either the Act or section 21(2) of the *Interpretation Act*. Second, MGB decision letter DL 017/05 expressed the same opinion regarding the Act.

The Respondent submitted that Mr. White did delegate the responsibility to prepare the assessments of the subject properties to Ms. Uttley, as evidenced by the Performance Planning System document. Mr. White's electronic signature on the assessment notices signifies his responsibility in law for them in his capacity as the DLA. The electronic nature of his signature is merely an administrative necessity because it is impossible to personally sign every assessment.

Decision Concerning Issue 3

3. (a) It is not necessary for sub-delegation by the DLA to an assessor to be in writing.
   (b) The DLA in the person of Mr. White impliedly sub-delegated the preparation of linear assessments, as confirmed by Mr. White's electronic signature.

In light of the decision for Issue 3, it is unnecessary to consider any further sub-issues.

Reasons

The MGB is satisfied that Mr. White in fact sub-delegated the preparation of linear property assessments to Ms. Uttley. There is no doubt that Ms. Uttley assessed the linear properties with the consent of Mr. White. This is inferable from her employment in the LPAS, the position she held in that organization and her responsibilities outlined in the Performance Plan document. There is nothing inconsistent in the assessment notice bearing DLA's electronic signature. In sub-delegating the authority to prepare linear property assessments, the DLA did not and could not thereby abdicate his discretion to confirm the exercise of that power by its sub-delegates.

The Complainant argued that the sub-delegation must be documented in writing. The MGB, as it stated in DL 017/05, does not find there to be authority for this proposition. In *obiter dicta* in Harrison, the court commented that how far Crown counsel must go and what evidence must be adduced to establish authority from the Attorney General will depend on the circumstances of the particular case. The court opined that it was normally sufficient if counsel produced a letter which he received and believed to be signed by an officer of the Department of the Attorney General whom he understands to have requisite authority to institute criminal appeals. It also noted that when counsel states that it is acting with the authority of the Attorney General, it is clothed with that authority. This suggests to the MGB that there are no strict requirements to perfect a sub-delegation. In this case, the MGB is satisfied that the DLA clothed Ms Uttley with the authority to prepare linear property assessments and that Ms. Uttley believed that the Performance Plan delegated such authority to her.

PART III: PROCEDURAL BACKGROUND AND COST APPLICATIONS

Procedural Facts

The following discussion outlines procedural facts related to the assessment status of Lines 251 to 255 that may be relevant to cost applications.

By letter dated November 20, 2003 the DLA requested information from the Complainant for preparing assessments for the 2004 tax year of Lines 251 to 255.

By faxes dated December 10, 2003 and December 12, 2003 the Complainant replied that Lines 251, 252, 253 and 255 were in the ground but not in operation, that no product had been introduced and that construction contractors were on site. Also, the Complainant indicated it would apply to the AEUB to amend the record for Line 254 as not-built.

By e-mail dated January 10, 2004, Ms. Uttley, the Operations Manager of the Linear Property Assessment Section (LPAS), replied that it required AEUB documentation as soon possible to delete Line 254 from the assessment inventory since the assessment was to be prepared by January 31, 2004.

By fax dated January 27, 2004, the Complainant sent to the LPAS the AEUB documentation approving the deletion of Line 254.

By e-mail dated January 28, 2004, Ms. Uttley replied that the AEUB documentation may have been received too late for the assessment run and would have to be part of the amended assessment set for May 2004.

In the Assessment Notice, dated February 13, 2004, the DLA assessed Lines 251, 252, 253, 254 and 255 as if tax were payable in relation to all of them for the 2004 tax year.

By fax dated March 11, 2004, the Complainant sent to the MGB an application for assessment complaint for Line 254 requesting a zero assessment on ground that it was not constructed.

By letter dated March 17, 2004, the MGB acknowledged receiving the complaint and classified it as an inventory correction, allowing until May 13, 2004 for the parties to reach a resolution.

By fax dated March 18, 2004, the Complainant sent to the MGB an application for assessment complaint for Lines 251, 252, 253 and 255 requesting a zero assessment on the ground that they were not operational as of October 31, 2003.

By letter dated March 22, 2004, the MGB acknowledged receiving the complaints and classified them as inventory corrections, allowing until May 13, 2004 for the parties to reach a resolution.

By e-mail dated May 10, 2004, the Complainant indicated to the MGB that it had not heard from the DLA to resolve the complaint and requested further direction.

By e-mail dated May 10, 2004, the MGB advised the Complainant that it could proceed to file its evidence and that the Complainant should continue to attempt to resolve the complaints with the Assessment Services Branch.

By e-mail dated May 11, 2004, the Complainant asked Ms. Uttley if the LPAS required additional information to change the assessment as requested.

By e-mail dated May 11, 2004, Ms. Uttley indicated that the LPAS required the hydrostatic test date for the Lines. She also noted that for assessment purposes, a distinction exists between whether a pipeline is constructed and capable of being used and whether it is operational.

By e-mail dated May 18, 2004, the Complainant asked Ms. Uttley when the information was required since its engineering employee was absent.

By e-mail dated May 18, 2004, Ms. Uttley requested the information as soon as possible and noted that the MGB was in the process of setting preliminary hearing dates.

By fax dated May 20, 2004, the Complainant sent to the LPAS the hydrostatic test dates for Lines 251, 252, 253 and 255. The fax indicated that the tests were completed from February 28 to March 22, 2003, but emergency block valve automation testing and updates to the leak detection system and the emergency response plan, as required by the AEUB, remained to be completed before the pipeline could be put into service.

By letter dated May 21, 2004, the MGB advised the parties that a preliminary hearing would be scheduled on June 14, 2004. The hearing was so held.

By cheque dated June 23, 2004, the Complainant paid the Regional Municipality of Wood Buffalo $785,185.22 in respect of property tax owing for the 2004 taxation year.

By cheque dated July 21, 2004, the Complainant paid the County of Athabasca $656,559.87 in respect of property tax owing for the 2004 taxation year.

By cheque dated October 27, 2004 the Complainant paid Lakeland County $785,185.22 in respect of property tax owing for the 2004 taxation year.

On November 15, 2004 the MGB held a preliminary hearing. In MGB Decision Letter DL 126/04, the MGB accepted the recommendation to reduce the assessment of Line 254 to zero because it had never been constructed.

By cheque dated December 12, 2004, Lakeland County refunded $7,952.17 to the Complainant in respect of property tax paid for the 2004 taxation year for Line 254, without earned interest.

By cheque dated January 19, 2005, the Regional Municipality of Wood Buffalo refunded $21,359.72 to Complainant in respect of property tax paid for the 2004 taxation year for Line 254, without earned interest.

On February 11, 2005, the MGB held a preliminary hearing. In MGB Decision Letter DL 019/05, the MGB accepted a recommendation to reduce the assessment of Line 251 to zero because it was not complete as of October 31, 2003 within the meaning of section 291(2)(a) of the Act. Likewise, the MGB accepted the recommendation to reduce the assessment of Line 252 to zero because it did not constitute a continuous string of pipe as defined by the "from" and "to" locations in the AEUB license.

As such, only the assessments of Line 253 (LPAU-ID 2122895) and 255 (LPAU-ID's 2122898 and 2122899) remain subject to this complaint.

Complainant's Position on Costs

The Complainant requested costs on a solicitor and own-client basis throughout. In the alternative, the Complainant requested the MGB to appoint a date for the parties to speak to costs.

In support of its application, the Complainant alleged that the DLA committed the following: failure to conduct a proper inquiry; abuse of process in ignoring information supplied by the Complainant before its own imposed deadline; failure to abandon positions previous denied by the MGB or stay the complaint process pending appeals of MGB Orders; re-argument of adverse procedural rulings during the hearing.

The Complainant submitted that the Respondent would not have assessed the subject properties had it followed the Alliance Order and would have ceased its opposition to the complaint had it followed the Corridor Order. As such, the Respondent's assess-first-and-investigate-later approach was a costly abuse of process.

The Complainant submitted that the facts of this complaint are analogous to those of the Corridor Order and if anything the subject properties were less constructed at the relevant date. Even though the MGB is not bound by *stare decisis*, fairness requires the MGB to apply the principles of the Corridor Order consistently to this complaint and order a zero assessment. Reference was made to the case of Alberta (Municipal Affairs) v. Telus Communications Inc., [2002] ABCA 1999, wherein Justice Berger stated that "Matters assigned to the Board for decision are important and complex and must be resolved with consistency." Consistency aside, the subsequent decisions of the Court of Queen's Bench and Court of Appeal now constitute binding authority to compel a zero assessment.

Respondent's Position on costs

The Respondent submitted that there was no direction from the MGB for the parties to speak to costs during the hearing. As a matter of record, the Respondent submitted that the Complainant's alleged grounds for costs are not consistent with the MGB Procedure Guide, the Complainant's facts are incomplete and the motives ascribed to the Respondent are inaccurate.

Decision as to Costs

With respect to costs, the MGB determines that either party may submit a formal application for costs, with reasons, within 30 days of issuing this decision and the MGB will consider whether to schedule a cost hearing at that time.

It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta, this 28th day of March 2006.

MUNICIPAL GOVERNMENT BOARD

(SGD.) R. Scotnicki, Presiding Officer

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
D. Samuelson	Legal Counsel for the Complainant
P. Jeffrey	Legal Counsel for the Complainant
C. Pinto	Witness for the Complainant
F.E. Webb	Witness for the Complainant
R.G. Fyfe	Witness for the Complainant
B.A. Sjolie	Legal Counsel for the Respondent
C.M. Zukiwski	Legal Counsel for the Respondent
C. Uttley	Witness for the Respondent
G. Moffatt	Witness for the Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB:

NO.	ITEM
Exhibit C-1	Position, Evidence and Argument of AOSPL; List of Witnesses and Will Say Statements
Exhibit C-2	Expert Opinion Report of R. Glen Fyfe, P. Eng.
Exhibit C-3	AOSPL Systems Map, May 8, 2003
Exhibit C-4	Engineering / Operations AOSPL File Index
Exhibit R-5	Witness Report of Chris Uttley
Exhibit R-6	Witness Report of M. Gerald Moffat, P. Eng.
Exhibit R-7	Respondent's Legal Argument
Exhibit R-8	Respondent's Volume of Legislation
Exhibit R-9	Respondent's Volume of Documents
Exhibit R-10	Respondent's Volume of Authorities
Exhibit R-11	Volume of Documents Received from Complainant
Exhibit C-12	Additional Documents of Frederick E. Webb, P. Eng.
Exhibit C-13	Rebuttal Report of R. Glen Fyfe, P. Eng.
Exhibit C-14	Rebuttal Report of Carmen Pinto
Exhibit C-15	Curriculum Vitae of Frederick E. Webb, P. Eng.
Exhibit C-16	Curriculum Vitae of Carmen Pinto
Exhibit C-17	Curriculum Vitae of R. Glen Fyfe, P. Eng.
Exhibit C-18	*Pipeline Regulation,* Alta. Reg. 122/87

Exhibit C-19	MGB 086/04 Corridor Pipeline Decision
Exhibit R-20	CSA Oil and Gas Pipeline Systems: Table of Contents
Exhibit R-21	CSA Oil and Gas Pipeline Systems: Definitions
Exhibit R-22	CSA Oil and Gas Pipeline Systems: Table 10.1
Exhibit C-23	MGB Questions for Mr. Fyfe Regarding AOSPL's Linear Property Complaint
Exhibit C-24	*Pipeline Act*, R.S.A. 2000, c. P-15
Exhibit R-25	Photo: MVL 14 Typical Cross Over to Stopple Tee before Hot Tap Tie-In
Exhibit R-26	Photo: MVL 34
No Exhibit R-27	*Number skipped during labelling*
Exhibit R-28	Report: Status of Corridor Pipelines
Exhibit R-29	MGB Practice Notice Change: Linear Property Assessment Complaints; Municipal Participation
Exhibit C-30(a)	Letter: D. Samuelson to C. Zukiwski, February 14, 2005
Exhibit C-30(b)	Letter: C. Zukiwski to M. D'Alquen, February 18, 2005
Exhibit C-30(c)	Letter: C. Zukiwski to M. D'Alquen and A. Sjouwerman, February 24, 2005
Exhibit C-31	Alberta Municipal Affairs Interpretive Guide to Appendix V of the Consolidation of the 2003 Minister's Guidelines
Exhibit C-32	Alberta Municipal Affairs Special Property Assessment Guide (S.P.A.G.)
Exhibit C-33(a)	Alberta Energy and Utilities Board Guide 56: Energy Development Applications and Schedules, October 2003
Exhibit C-33(b)	Alberta Energy and Utilities Board Bulletin 2003-34
Exhibit C-34	Complainant's Brief and Rebuttal, Re: *Ultra Vires* Assessment
Exhibit R-35	Evidence Summary prepared by C. Uttley
Exhibit R-36	Respondent's Argument, Re: Delegation
Exhibit R-37	Respondent's Volume of Authorities, Re: Delegation
Exhibit R-38	Respondent's Volume of Documents & Board Orders
Exhibit C-39	Complainant's Final Argument
Exhibit R-40	Reply to the Complainant's Final Argument
Exhibit R-41	Respondent's Evidence Summary and Legal Argument
Exhibit C-42	Complainant's Reply Argument
Exhibit C-43	Complainant's Supplemental Comments – December 19, 2005
Exhibit R-44	Respondent's Additional Submission – December 20, 2005
Exhibit C-45	Complainant's Reply to Respondent's Additional Submission – January 2, 2006
Exhibit R-46	Respondent's Rebuttal Argument - January 3, 2006
Exhibit C-47	Complainant's Supplemental Comments Relating to the Decision of the Alberta Court of Appeal in the Alliance Case - January 30, 2006

Exhibit R-48	Respondent's Submission – Impact of the Court of Appeal's Decision in Alliance – January 31, 2006
Exhibit C-49	Complainant's Reply to the Respondent's Submission - Impact of the Court of Appeal's Decision in Alliance - February 8, 2006
Exhibit R-50	Respondent's Rebuttal - Impact of the Court of Appeal's Decision in Alliance - February 8, 2006