

**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 REVIEW** of a decision of the Municipal Government Board (MGB) respecting Linear Property Assessments for the 2011 tax year, filed on behalf of Alberta Power (2000) Ltd.

**CITATION:** Alberta Power (2000) Ltd. v. Designated Linear Assessor for the Province of Alberta, 2012 ABMGB 47.

**BETWEEN:**

Alberta Power (2000) Ltd. as represented by Wilson Laycraft LLP – Complainant

- and -

Designated Linear Assessor for the Province of Alberta as represented by Reynolds, Mirth, Richards & Farmer LLP – Respondent

**BEFORE:**

Members:

P. Petry, Presiding Officer

J. Fleming, Member

L. Loven, Member

Case Manager:

A. Witt

[1] On Friday, October 5, 2012, in the City of Edmonton, in the Province of Alberta, a panel of the MGB reviewed MGB 034/12, a decision on the assessment of electric power systems linear property, with respect to the Linear Property Assessment Unit Identification Numbers (LPAU IDs) 7496603, 7828900, and 8201145 associated with Linear Property Assessment Classification Code GEN 102.

**BACKGROUND**

[2] The three LPAU IDs at issue represent certain linear property assessments in the Battle River electric power generating station (Battle River). Battle River is located in the County of Paintearth. Following a hearing, MGB 034/12 was rendered in respect of 2011 tax year assessment complaints made by Alberta Power (2000) Ltd. and Milner Power Limited Partnership. This review request affects linear property assessments of only Alberta Power

## **BOARD ORDER: MGB 047/12**

(2000) Ltd. linear property. Therefore, Alberta Power (2000) Ltd. is the sole Complainant in this order.

[3] This review hearing was ordered pursuant to the MGB's decision in MGB 043/12. This decision put the matter before a newly constituted panel (the review panel) as two thirds of the original panel that rendered MGB 034/12 (the original panel) had retired from the MGB.

[4] At issue in the 2011 tax year assessment appeal was how to assess certain projects done on Battle River between 2005 and 2010. Subsequent to a hearing in March 2012 (the merit hearing), but prior to issuing the written decision, the MGB received joint recommendations with respect to the assessment amounts for the assessments under complaint. These joint recommendations were presented in three scenarios, and are more completely described in MGB 034/12 at paragraph 16. The MGB did not hear any testimony in respect to the joint recommendations. In all of the joint recommendations from the Complainant and Respondent, the assessments of LPAU IDs 7496603, 7828900, and 8201145 were to be reduced in some measure. Ultimately, the MGB reduced the assessment of Battle River by \$11,978,870.

[5] The Complainant argues that the MGB had incorrectly applied the joint recommendations in respect to a project, number 196, in Battle River's assessment. The Respondent states that the MGB made its own decision and deliberately did not follow all of the parties' joint recommendations. Both parties' positions are set out in more detail below.

### **PRELIMINARY ISSUE**

[6] Is the Complainant's new filing allowed?

### **PRELIMINARY ISSUE - BACKGROUND AND PARTY POSITIONS**

[7] Shortly prior to the hearing, the Complainant sent the MGB excerpts from exhibits filed for the merit hearing (C-1 and R-22), which it intended to use to explain its position. The Complainant's excerpts included handwritten annotations. The Respondent objected to the admission of these excerpts on the basis that the annotations constituted new evidence. Under the MGB's order in MGB 043/12, no new evidence could be filed for the review hearing.

### **PRELIMINARY ISSUE - DECISION & REASONS**

[8] As explained at the hearing, the MGB decided that it would rely on the evidence as it was originally filed. The MGB determined that it would proceed on the basis that this hearing was to determine potential of an error that the original panel may have made in constructing its order. There would be no introduction or reintroduction of evidence from MGB 034/12 at this hearing. The MGB would hear exclusively argument in this regard. It was implicit that the review panel would consider the documentation before the original panel, as indeed occurred at the hearing.

**ISSUE**

[9] Did the MGB err in its decision, MGB 034/12, when it set the assessed value for LPAU ID 7496603 at \$6,217,360?

**THE COMPLAINANT’S POSITION**

[10] The Complainant submitted that this matter is before the review panel because the original panel erroneously failed to remove value from Battle River’s assessment for original components that were removed in the course of project 196. This was a factual oversight that left old turbine parts’ installation costs still included in the assessment. This oversight assesses non-existent property. The solution to this oversight is to remove included costs from LPAU ID 7496603 that represent the original parts of the turbine that were removed, which consists of costs dating to 1978, the original year of construction of the turbine. Removing these costs from the original construction costs is what the parties’ joint recommendations to the original panel intended.

[11] The Complainant explained that the original panel chose that neither replacement nor replacement in kind projects would be included in the assessment, except for project 196. In this case, the values for replacement and replacement in kind became part of the included costs of the assessment. But what those values were and whether they were correct, or not, was never something before the original panel. The Complainant noted that the original panel said “the Complainant did not put forward any evidence to indicate what those proportional costs might be” [at para. 148]; indicating that this comment reflects the fact that those values were not an issue before the original panel.

[12] The Complainant submitted that an oversight occurred when the original panel said that project 196 appeared over two LPAU ID numbers, because in fact it actually appears over three LPAU ID numbers. Referring to Exhibit R-22, Scenario 3, pages 23 and 27, the Complainant noted there is a portion of these pages marked “calculation to remove IC from original year”. If replacement and replacement in kind values are to be assessed, then it was agreed that there were two values that need to be removed from LPAU ID 7496603, as noted on each of pages 23 and 27. On page 18 of Scenario 3, the calculation to remove IC from LPAU ID 7496603 is performed and the agreed value for this LPAU ID’s assessment is \$4,579,550.

[13] The Complainant submitted there was an oversight in paragraph 150 of MGB 034/12 in that the original panel failed to recognize the third LPAU ID affected by the joint recommendation valuation process. This work was directly referenced in project 196’s description (Exhibit C-1, Tab Q), that the work replaced an existing stage in the turbine. If the correction is not done, then there is a duplicate assessment of the original turbine portion that was removed and the replacement turbine portion. It could not have been the intention of the original panel to duplicate the assessment.

## BOARD ORDER: MGB 047/12

[14] The Complainant observed that the primary question before the original panel was “Should any of the costs of the projects in issue be added to the included costs of the assessments of the subject property?” [at para. 29] When the original panel referred to new construction [at para. 149], it did not say something was new in that it was not pre-existing, because in the case of project 196, the turbine was obviously pre-existing. Everyone was discussing the replacement of the 13<sup>th</sup> stage of the turbine, not stages 1-12. Therefore, the question that the MGB was answering at paragraph 150 was whether the work performed was a construction activity under the *2005 Construction Cost Reporting Guide*, Min Ord. No. 268/10, [as posed as question “E” at para. 30]. The original panel determined that the work was a construction activity, so its costs were included in the included costs. But the actual quantum of costs was not under dispute, and not a matter the original panel could make a finding on. The original panel was provided with numbers and the process to add them into the assessment in the event that portions of the project costs were to be included costs. The project costs were added not because project 196 created new property, but because it added to plant efficiency.

[15] The Complainant said that if the original panel had made a conscious, intentional decision, as asserted by the Respondent, then the original panel would have explained it in their order. The fact that it is not explained points to an oversight that the review panel should correct. The original panel should have referred to LPAU ID 7496603, which the joint recommendations (Scenario 3) explicitly referred to. The Complainant also indicated that there was never a dispute that project 196 was replacement work: the only question was whether it increased plant efficiency.

### THE RESPONDENT’S POSITION

[16] The Respondent submitted that the original panel did not make an error or oversight in MGB 034/12. The issue is whether the decision in respect to LPAU ID 7496603 was a mistake or a conscious decision. The Respondent indicated that the decision was consciously made by the original panel, for reasons outlined below, although its reasons could have been expanded. However, that is not a reason to change the original panel’s decision. The Respondent submitted that this rehearing request occurred because the Complainant disagrees with the original panel’s finding of fact. Such a disagreement is also not a reason to change the original panel’s decision.

[17] The Respondent acknowledged that the joint recommendations would have applied to LPAU ID 7496603, if the original panel were to have found that project 196 was a replacement project, like the other projects put to that panel as replacements. However, unlike those other projects, the original panel found that project 196 increased the efficiency of Battle River and only 7% of it was a replacement. The other 93% of project 196 was not a replacement. The Respondent pointed to the original panel’s findings [at para. 146], which singled out project 196 from all of the other projects in issue before the original panel. Having singled project 196 out, it makes sense that the original panel would have treated it differently.

[18] The Respondent indicated that the engineer’s evidence in respect of project 196 was rejected, unlike the other projects put to the original panel as replacement projects. The original

## **BOARD ORDER: MGB 047/12**

panel stated that the engineer's "method is too simplistic. The proportional increase in output is not necessarily reflective of the proportion of costs that were expended to increase output ... The Complainant did not put forward any evidence to indicate what those proportional costs might be" [paraphrased from para. 148]. The Respondent did not challenge the engineer's characterization of project 196, but nonetheless the Board had to decide if the project changed the specifications and characteristics of the linear property, as per the legislation. The parties put matters to the Board and framed the issues, but it was up to the original panel to evaluate the evidence before it. The Respondent observed that the original panel's findings in respect of project 196 were unexpected to the parties. The Respondent said that this text [at para. 148] nonetheless shows the original panel rejecting evidence that the Complainant put before it.

[19] Further, the original panel closely examined project 196. It concluded that there was some duplication of existing work in project 196, and said that there was some repair and accepted 7% to reflect that [at para. 149]. The original panel also said: "in the absence of better evidence from the Complainant as to costs attributable to the uprate, the balance must go to new construction" [at para. 149]. The Respondent submitted that this means the original panel found 93% of project 196 to be new, i.e., it is not a replacement. Therefore, there is nothing to take out, as the Complainant indicated should happen. If it were to have been found to be a replacement, like the other projects, some value should have been removed. Therefore, there is no error that one LPAU ID is missing. There is no reason to be concerned about the decision on LPAU ID 7496603 in MGB 034/12. The decision was deliberate.

### **FINDINGS**

[20] There is no error in MGB 034/12 in regards to the MGB's decision on the assessment of LPAU ID 7496603.

### **DECISION**

[21] The MGB's decision on the assessments of LPAU IDs 7496603, 8201145 and 7818900, as set out in MGB 034/12, is confirmed.

### **REASONS**

[22] After hearing from the parties, and conducting a careful reading of MGB 034/12 and associated documentation, the review panel determined that the decision of the original panel of in MGB 034/12 contained no oversight in regards to its decision on LPAU ID 7496603 or others. In hindsight, the original panel could have been more explicit in stating that because it determined project 196 should be treated as "new construction", no pre-existing included costs should be removed from Battle River's assessment. This would have explained the main concern that the MGB focused on in MGB 043/12, the decision which brought about this hearing.<sup>1</sup> But

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<sup>1</sup> Two further concerns raised in MGB 043/12 were explained by the parties: The Complainant noted that the not quite 7% factor mentioned in MGB 043/12, at para. 17, came directly from page 23 of Exhibit R-22, Scenario 3.

## BOARD ORDER: MGB 047/12

that is all the oversight MGB 034/12 contains. The Complainant's concerns about some of the decision in MGB 034/12 can be explained by the fact that the original panel rejected some of the Complainant's evidence.

[23] On a plain reading of MGB 034/12, the original panel treated 93% of project 196 as "new construction". It determined that this project was "the only project that changed the specifications and characteristics of the subject properties" (at para. 77 – all paragraph references in these reasons are to MGB 034/12). This finding was based in part on the Complainant's acknowledgments that the project was an "upgrade" or "uprate" and unlike the other projects at issue (see paras. 119 and 122). It is clear that the original panel carefully considered the full extent of project 196 as follows:

[146] ... Battle River project 196 was performed to increase output capacity. It is only a repair in so far as the parties agreed it to be (7%).

[148] ... This project added output capacity to the plant in the form of a better turbine, that was not there before and the MGB is satisfied that the work performed – or at least a portion of it - constitutes a construction activity that must be captured in the assessment.

[24] The original panel determined that, of the entirety of project costs at issue before it, "only the costs of projects categorized as new, with the exception of project 196, form part of the Subject Properties' included costs" (at para. 157). The parties' joint recommendations under Battle River Scenario 1, Exhibit R-22 (Scenario 1), would only include the costs of projects categorized as new.

[25] The original panel adopted all of the parties joint recommendations in respect to Scenario 1 – only including new projects in the assessment – except those for project 196 (which it indicated were LPAU IDs 7828900 and 8201145). This can be seen in both paragraph 157 and "Appendix F: Battle River – Revised Assessments". These portions of the original panel's decision indicate that all of the parties' recommendations in Scenario 1 were adopted exactly, except for again those two LPAU IDs.

[26] The original panel said that some replacement in kind projects should be assessed:

[111] The exception is that the costs of replacements in kind which improve operational efficiency should be allocated between included and excluded costs to reflect the cost of the new part's contribution to increased operational efficiency on one hand and overlap with the value of existing assets on the other (TransAlta at paras. 79 and 88).

[27] The original panel also observed that the Complainant did not put forward evidence to indicate what the proportional costs might be for project 196 (at para. 148). The original panel

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Also, in regards to what "other factors not in dispute" [at para. 150] are, mentioned in MGB 043/12 at para. 20, the Respondent said that these were excluded costs and schedule C depreciation.

## BOARD ORDER: MGB 047/12

expressly rejected the Complainant's expert witness' allocation of what was new, replacement or replacement in kind on this project on the basis of that allocation being inconsistent with how allocations should be made (it was "much too simplistic"; at para. 148). In this background, the original panel appears to have been comfortable only with making an allocation to non-assessable repair only so far as the parties agreed that project 196 should not be assessed:

[149] Some work appears to have been done in lieu of scheduled turbine work, and there was obviously a duplication of work in rebuilding a pre-existing turbine and replacing existing parts. Against this background the parties were able to agree that project 196 was a least 7% repair ... Accordingly, MGB finds 7% should be allocated to repair. In absence of better evidence from the complainant as to the cost attributable to the uprate, the balance must go to new construction.

[28] Here it is clear that the original panel understood the nature of project 196 but suggested that better evidence may have assisted in the apportionment of its allocations. The original panel implied that the "better evidence" that could have existed in this respect was not presented. This is not to say that there was no evidence or issue here, as the Complainant asserted at the October 5<sup>th</sup> hearing: "those values were not an issue before the original panel". The Complainant told the original panel that 3% was the proportional cost, so those values were in issue, on a proportional basis. The original panel rejected them.

[29] The original panel's decision in regards to the LPAU IDs 7828900 and 8201145 was taken directly from Battle River Scenario 3, Exhibit R-22 (Scenario 3), which treated 93% of project 196 as assessable. These were the joint recommendations on LPAU IDs for projects that the MGB would determine to be new construction. Scenario 3's recommendations for these two LPAU IDs were adopted exactly by the original panel in "Appendix F".

[30] Neither party referred the review panel to evidence or argument of the relative merits of the specific assessment of LPAU ID 7496603 that was before the original panel. However, LPAU ID 7496603 was linked to project 196. This is clear to the review panel and would have also been clear to the original panel, because of Exhibit R-22 and because of the parties' statements: if the source of a project's costs could not be found, that they would go back to the original construction costs (in this case, 1978) for joint recommendations. This was explained to the original panel on May 22, 2012 (see transcript p. 9, ll. 9-18) and the review panel at the hearing.

[31] In Scenario 1, the recommendation for LPAU ID 7496603 was based on an included cost of \$12,660,845, a cost factor of 2.14, an assessment year modifier of 1.136, and depreciation of 0.202. Multiplying these all together ( $\$12,660,845 \times 2.14 \times 1.136 \times 0.202$ ) equalled the recommended assessment of \$6,217,360, which the original panel accepted. There was nothing on the record before the original panel (nor the review panel) to show how the original assessment of LPAU ID 7496603 was previously in error prior to the MGB's decision. Still, it appears that nothing was removed from the original 1978 included costs anywhere in Scenario 1.

## **BOARD ORDER: MGB 047/12**

[32] The original panel did not elaborate on its reasons preferring the value attributable to LPAU ID 7496603 as expressed under Scenario 1 as opposed to that value expressed under Scenario 3 of \$4,579,550. However, given that the original panel found 93% of project 196 to be new construction, it is unsurprising that the original panel picked Scenario 1: 93% of project 196 was found to be new and “must be captured in the assessment” (at para. 149). The Respondent is correct. There does not appear to be any need to remove any amount from the original included costs. This outcome is what the Complainant submits was a mistake in the original panel’s decision. The review panel disagrees: this outcome does not appear to be a mistake, but rather internally consistent with the original panel’s decision.

### **Conclusion**

[33] The original panel’s decision regarding LPAU ID 7496603 does not appear to be an error. In fact, the outcome is directly in line with how the original panel framed its decision (see paragraphs 149, 150 and 157). The Complainant’s concerns about how the joint recommendations were applied go directly to the original panel’s findings of fact that rejected some of the Complainant’s evidence. The review panel therefore finds no compelling basis to persuade it to alter the original panel’s decision in MGB 034/12, which is therefore confirmed.

It is so ordered.

No costs to either Party.

Dated at the City of Edmonton, in the Province of Alberta, this 26th day of November, 2012.

**MUNICIPAL GOVERNMENT BOARD**

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D. Woolsey authorized to sign for P. Petry, Presiding Officer (signed)



**APPENDIX "A"**

**DOCUMENTS CONSIDERED BY THE MGB**

Refer to MGB 034/12 and MGB 043/12.

**APPENDIX "B"**

**ATTENDANCE AT THE HEARING**

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C. Hall, AEC International, for the Complainant (by Telephone)  
B. Dell, Wilson Laycraft LLP, for the Complainant (by Telephone)

C. Zukiwski, for the Respondent  
D. Imrie, Linear Property Assessment Unit  
A. Slotsve, Linear Property Assessment Unit

G. Glazier, County of Paintearth  
W. Weber, County of Paintearth  
B. Hepp, County of Paintearth  
T. Peach, County of Paintearth

D. Reedy, Alberta Association of Municipal Districts and Counties  
K. Heyman, Alberta Association of Municipal Districts and Counties