

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 on linear property assessments for the 2003 tax year filed on behalf of Atco Gas and Pipelines Ltd.

BETWEEN:

Atco Gas and Pipelines Ltd., represented by AEC Valuations (Western) Inc., Bennett Jones, and Wilson Laycraft – Complainant

- a n d -

The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, represented by Alberta Justice and Brownlee Fryett – Respondent

BEFORE:

Members:

C. Bethune, Presiding Officer
A. Knight, Member
T. Robert, Member

Secretariat:

D. Woolsey
A. Sjouwerman

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta commencing December 15, 2003.

These are complaints to the Municipal Government Board (MGB) about the 2002 linear property assessment notices issued by the Respondent Designated Linear Assessor (DLA). The complaints relate to the linear property assessments for various pipelines, as identified by their respective Permanent Property Inventory Identifiers (PPI-IDs) in Appendix “C” and “D” of this order.

OVERVIEW

Linear property assessments, in this case pipelines, are prepared based on the specifications and characteristics of the linear property as of October 31 in the year prior

to the year in which the tax is imposed. The DLA determines the specifications and characteristics of the pipelines based on the records of the Alberta Energy and Utilities Board (AEUB). The authority of the AEUB is the regulation and approval of the construction, operation, and abandonment of the pipelines in the province and it is the records of this agency that forms the basis of the linear property assessment.

The Complainant undertook an audit of its pipeline system and found a number of errors between the actual constructed length of some pipelines and the operational status of pipelines and the AEUB records. In addition, errors were discovered in the records regarding duplicate licences and pipelines that were abandoned or never constructed. As a result of the audit, the Complainant filed applications with the AEUB prior to October 31, 2002, for an amendment of the records. The amendments were not processed prior to October 31.

The Complainant argues as the main part of its argument that the assessment of the subject pipe must reflect the actual specifications and characteristics whereas the DLA argues that it is what is on record at the AEUB that determines the specifications and characteristics. In addition, the Complainant argues that they have been treated inequitably with others and the DLA submits equitable treatment has occurred.

PRELIMINARY MATTERS

Intervenors

The City of Edmonton filed for Intervenor status in the matter. The City of Edmonton argued that the municipality had an interest in the proceedings due to the potential negative impact a decision could have on the level of linear property assessment and subsequent amount of taxes levied on the reduced assessment.

The City of Edmonton submitted that they would not be making a formal submission in respect of the complaints, but did request that the option of asking questions of the parties be allowed. As the parties did not raise an objection to the granting of Intervenor status to the City of Edmonton, the MGB granted status subject to the limitations outlined above.

Evidence

During the period between the filing of the complaints and the commencement of the hearing of the complaints, a number of issues arose respecting first the sufficiency of the information provided in support of the filing of the complaints, second the time necessary to prepare for the hearing of the complaints and finally with the introduction of evidence that was not previously exchanged between the parties and the Intervenor.

Sufficiency of Information

Upon notification of the complaints, the DLA filed a request to have the MGB direct the Complainant to provide more detailed information in support of the complaints. In response to the request, the agent acting on behalf of the Complainant advised that the Complainant was in the process of gathering the information and it would be provided once it was available.

Timelines

On April 11, 2003 the MGB issued notification of a hearing into the complaints scheduled to commence on May 23, 2003, however this date was subsequently amended to June 1, 2003. At the hearing of June 1, 2003 the issues were limited to preliminary matters relating to evidentiary matters. Following the hearing, the MGB issued specific instructions respecting the provision of the detailed information in support of the complaints, the timelines for the exchange between the parties and Intervenor of evidence and argument, and the commencement date of October 6, 2003 for the hearing into the merits of the complaints.

Following the issuance of the instructions, both parties made a number of requests for extensions to the timelines established for the exchange of evidence and arguments. As a result, the MGB held a hearing on August 15, 2003 to hear the requests, as well as a request from the DLA for an order directing the disclosure of information by the Complainant. After hearing from the parties, the MGB, in Notice of Decision NO. DL 052/03, refused the request of the DLA, but did grant an extension to the timeline for the exchange of the evidence. In addition, the MGB reconfirmed the commencement on October 6, 2003 of the hearing into the merits of the complaints.

New Evidence

At the commencement of the hearing on October 6, 2003 the DLA raised an objection that the documents of the Complainant contained evidence that had not been previously exchanged between the parties and requested an adjournment with costs. In response to the objection of the DLA, the Complainant raised the issue that the DLA had not provided prior notice of its intent to raise the evidentiary matter. The Intervenor also raised objections to the fact that they had not been given sufficient notice that the Complainant had retained legal counsel or any notice that a motion for adjournment would be raised by the DLA.

The MGB addressed each of the issues and issued further instructions as to the evidence, case law, witness statements and responses of the DLA. The parties were also advised that they could pursue the issue of costs at the conclusion of the hearing into the merits of the complaints. The hearing into the merits was rescheduled for December 15, 2003. A

full review of the issues, party positions, MGB decision and reasons are contained in Decision Letter NO. DL 063/03.

No further preliminary matters were raised by the parties and the hearing into the merits of the complaints proceeded on December 15, 2003.

BACKGROUND

A requirement imposed by the AEUB on ATCO Gas & Pipelines (ATCO) because of a sale and transfer of assets between subsidiary corporations of ATCO was to conduct an audit of its complete pipeline asset base. As a result of the audit, ATCO became aware of a number of errors in relation to the records of the AEUB. These errors can be generally classified as errors in the actual length of a pipeline, operating status and duplication of licenses.

AEUB Records

In the province of Alberta if a pipeline is to be constructed, application is made to the AEUB for approval for the construction of the pipeline. AEUB issues a licence and, following a certain period of time, enters the operational status into its records. The information recorded would include the length of the pipeline, size of pipe, quality of pipe, type of product to be carried by the pipe and operational status. Responsibility for the correctness of the records is with the operators or owners/operators of the pipeline. For example, if a pipeline is to be abandoned, there is a duty on the operator or owner/operator of the pipeline to apply for a change of status and undertake abandonment as prescribed by the AEUB. Another example includes that the owner/operator is responsible for reporting to the AEUB if there is a difference between the proposed pipeline length and the as-built length.

Assessment

The DLA prepares the assessments of linear property using the records of the AEUB as was the case for the year under complaint. Generally speaking, the assessments are a reflection of the information contained in the records of the AEUB on October 31 of any given year.

Subject Complaints

Physical length

In conducting the audit, as required by the AEUB, ATCO compared the quoted pipeline lengths in the original application or permit contained in the AEUB records with the as-built drawings. The result of the comparison was that a number of the recorded lengths

were in error and needed to be corrected to reflect the actual physical length of the pipelines.

Operating status

Over the course of time, ATCO, like other companies operating pipelines, has abandoned pipelines. The process is to physically abandon the pipeline in accordance with the *Pipeline Act*, then make application to the AEUB for a change in operational status of the licence. During the course of the audit, ATCO determined that a number of pipelines were listed as “operating” within the AEUB records, but had been abandoned.

License

In conducting the audit of physical assets of ATCO, it was determined that some pipelines were licensed twice, other lines had actually been physically removed and a number of lines were recorded as existing based on the issuance of a licence/permit, but were never constructed.

Audit results

Based on the results of the audit, ATCO filed applications with the AEUB for amendment of the records. These applications were filed prior to October 31, 2002, however, the AEUB did not finalize processing the application prior to the October 31 date. As a result, the official records of the AEUB still reflected the errors identified by the audit and the subject assessments are based on the non-amended records.

As of the October 31, 2002 date, the applications for amendment of the AEUB records fall into three categories: completed applications accepted by the AEUB, applications not yet processed by the AEUB, and applications for change after October 31, 2002. Applications for change accepted by the AEUB were not processed prior to October 31, 2002.

Summary

The Complainant, ATCO, having determined that the records of the AEUB were in error filed applications for amendment of the records. It is the position of the Complainant that having filed the application for amendment, the DLA, has a responsibility to ensure that the assessment of the subject property reflects the actual specifications and characteristics as of the October 31 date. The Complainant requests that the total assessment for the affected municipalities of \$40,136,420 be reduced to \$25,795,324. However, this request includes assessments for a number of Indian Reserves which are outside of the jurisdiction of both the MGB and the DLA, and are not considered as being under complaint.

ISSUES

1. Which takes precedent, the actual physical specifications and characteristics of the linear property or the specifications and characteristics of the linear property as contained in the records of the AEUB?
 - a. If the records of the AEUB are in error does the assessment respecting the abandoned pipe or non-existent pipe meet the definition of linear property?
 - b. What is the duty of the DLA or the responsibility of the owner/operator of the linear property?
2. If the records of the AEUB do take precedent, what are the records of the AEUB?
 - a. If the records of the AEUB include all the information respecting a pipeline, do applications for amendment of the record constitute information respecting that pipeline and thereby form part of the record?
 - b. If so, is the DLA limited to only those applications for amendments filed and on hand prior to October 31?
 - i. Do the records have to be processed by the AEUB prior to October 31?
3. Within the context of a complaint about a linear property assessment, what is the responsibility of the owner/operator of the linear property to ensure that the records of the AEUB accurately reflect the specifications and characteristics of its linear property on October 31?
4. Is the October 31 date arbitrary and if so, should the DLA undertake to amend or correct assessments if there is a change in the specifications and characteristics of linear property after October 31?
5. In light of the authority of the DLA to correct an assessment, how is this authority to be exercised in relation to the requirement for linear property assessments to reflect the specifications and characteristics as of October 31?
6. Has the DLA corrected assessments of other linear property or made recommendations for the correction of linear property when that property has been under complaint?
 - a. If so, do the actions of the DLA in not correcting or recommending a correction with respect to the subject linear property create an inequity?
 - b. If so, is the Complainant due a similar remedy?
7. Has the assessment practice of the DLA changed from requesting a report from the owner/operator of the linear property to relying *solely* on the records of the AEUB?
 - a. If so, was the Complainant notified of the change of practice?

If not, was the Complainant prejudiced by this lack of notice of a change of practice?

LEGISLATION

In order to decide these issues the MGB looks to the direction contained in the following relevant sections of the Act and regulations.

Municipal Government Act

The Municipal Government Act (Act) provides a definition of linear property that include pipelines. The question of the definition of pipeline is not in dispute, but quoted to provide a context for the argument of the parties.

284(1)(k) "*linear property*" means

...

- (iii) *pipelines, including*
 - (A) *any continuous string of pipe, including loops, by-passes, cleanouts, distribution meters, distribution regulators, remote telemetry units, valves, fittings and improvements used for the 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*

Section 292 of the Act provides the basis for the standards, procedure and practice for the assessment of linear property. This section establishes the starting point in the assessment process for linear property and mandates that the DLA must prepare assessments for all linear property. It should be noted that this section prescribes that each assessment must reflect the specifications and characteristics of the linear property on October 31.

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.

(4) On receiving a request under subsection (3), the operator must provide the report not later than December 31.

(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.

Section 293 directs the DLA to follow the direction given in the regulations.

293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

(a) apply the valuation standards set out in the regulations, and

(b) follow the procedures set out in the regulations.

While the linear property assessment is based on the status of the linear property on October 31, the actual assessment of the municipality need not be completed until February 28 of the year in which the tax is imposed.

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

Section 305(1) addresses the remedy available to a party where an assessment notice was issued but the notice contains an error. As well, Section 305(2) addresses the remedy available to a party where certain linear property is assessable, but no assessment has been issued by the DLA for that property.

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

(a) the assessor may correct the assessment roll for the

- current year only, and*
- (b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.*
- (2) If it is discovered that no assessment has been prepared for a property and the property is not listed in section 298, an assessment for the current year only must be prepared and an assessment notice must be prepared and sent to the assessed person.*
- (3) If exempt property becomes taxable or taxable property becomes exempt under section 368, the assessment roll must be corrected and an amended assessment notice must be prepared and sent to the assessed person.*
- (4) The date of every entry made on the assessment roll under this section must be shown on the roll.*

Once an assessment has been made, there is a duty on the municipality to send an assessment notice to the assessed person. In addition, the municipality must insure that the assessment notice contains certain information which includes the date the notice is sent to the assessed person and the date when a complaint must be made.

308(1) Each municipality must annually

- (a) prepare assessment notices for all assessed property, other than linear property, shown on the assessment roll of the municipality, and*
 - (b) send the assessment notices to the assessed persons.*
- (2) The assessor designated by the Minister must annually*
- (a) prepare assessment notices for all assessed linear property,*
 - (b) send the assessment notices to the assessed persons, and*
 - (c) send the municipality copies of the assessment notices.*
- (2.1) The municipality must record on the assessment roll the information in the assessment notices sent to it under subsection (2)(c).*
- (3) The assessment notice and the tax notice relating to the same property may be sent together or may be combined on one notice.*

309(1) An assessment notice or an amended assessment notice must show the following:

- (a) the same information that is required to be shown on the assessment roll;*
- (b) the date the assessment notice or amended assessment notice is sent to the assessed person;*
- (c) the date by which a complaint must be made, which date must not be less than 30 days after the assessment notice or amended assessment notice is sent to the assessed person;*
- (d) the name and address of the designated officer with whom a complaint must be filed;*
- (e) any other information considered appropriate by the municipality.*

(2) *An assessment notice may include a number of assessed properties if the same person is the assessed person for all of them.*

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

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

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

2002 Alberta Linear Property Assessment Manual

The Matters Relating To Assessment and Taxation Regulation AR 289/99 (the Regulation) establishes for the purpose of the valuation standard for linear property the Alberta Linear Property Assessment Manual, part of the Consolidation of the 2002 Minister's Guidelines regarding the Assessment of Farm Land, Linear Property, Machinery and Equipment, Railway (Minister's Guidelines). The Minister's Guidelines contain definitions and explanatory notes relative to the assessment of the linear property. The explanatory notes contain a section regarding a change in the status of a pipeline. This relates to pipelines having a permitted status in the records of the AEUB. However, this note does state that if the AEUB records indicate that a pipeline is operational and the assessor determines that it is not operational, the assessor will not prepare an assessment. It further states that if an assessment has been prepared, the assessor is to remove the assessment.

1.005 DEFINITIONS

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(q) *Permitted* is the status of a pipe as determined by the record at the AEUB.

...

1.006 EXPLANATORY NOTES

Changing Status of Pipeline (Pipe)

- 1) An assessment may be prepared for a pipeline shown on the record of the AEUB as having a *permitted* status if the assessor determines that the pipeline meets the requirements in Section 291(2)(a) of the *Municipal Government Act*.
- 2) If an assessor determines that a pipeline with an *operational* status at the AEUB does not meet the requirements of Section 291(2)(a) of the *Municipal Government Act* the assessor will:

- not prepare an assessment, or,
- where an assessment has been prepared, the assessor will remove the assessment from the record and record an “R” in the status field of the Pipe Detail Report to indicate that the record has been removed.

...

SUMMARY OF THE COMPLAINANT’S POSITION

The overall position of the Complainant is that the Act establishes what is to be assessed, how it is to be assessed and what to do if there are errors. In the case of linear assessments, the assessment is to be based on the specifications and characteristics of the linear property on October 31 of the year prior to the year a tax is imposed. The DLA is instructed that the specifications and characteristics are to be determined by either relying on the records of the AEUB or a report requested of the operator of the linear property. The Act then instructs the DLA to prepare the assessments by applying the valuation standards and procedures set out in the Regulation in a fair and equitable manner. The overriding purpose of this section of the Act is that the assessments must reflect the specifications and characteristics of the property and the assessment must also be fair and equitable. The Complainant referenced the fact that all the specifications and characteristics of the subject linear property existed prior to October 31, 2002 and the assessments do not reflect the specifications and characteristics.

The Complainant submitted that for each assessment year the DLA does have administrative practices that result in a number of corrections, changes and amendments to the linear property assessments after the October 31 date. The Act allows for corrections to the assessment records and the Complainant submitted that fairness and equity can only be achieved through the consistent application of the policies and practices of the DLA. The Complainant submitted that a change in policy position for the 2003 tax year has resulted in the DLA relying exclusively on the AEUB records as certified on October 31 of each year. Further, subject to a number of exceptions, the policy position of the DLA is that no corrections will be made to the linear assessment after that date despite the authority provided by the Act.

The Complainant submitted that the DLA has amended assessments in limited circumstances both prior to the subject year under complaint and for the year under complaint despite the information contained in the AEUB records. It is the position of the Complainant that selectively amending assessments based on the gravity of the tax exposure or shortfall in the tax base results in an inequitable and unfair assessment. The Complainant provided the following examples:

1. For the 2001 assessment year, amended assessments were prepared in November 22, 2002.

2. For the 2000 assessment year, amended assessments were prepared on September 17, 2001.
3. The DLA obtained an additional extract of the AEUB record on January 31, 2003, for the 2002 assessment year, to ensure that linear property was assessed to the proper owner/operator. Further, the DLA granted a date of April 14, 2003, to correct ownership.

In addition to the specific examples listed above, the Complainant submitted that the DLA has stated that large errors can be corrected. Also, for the 2002 tax year (2001 assessment year), the DLA would not oppose changes that are agreed to by the industry, Complainant and DLA when brought before the MGB. It is the position that the examples demonstrate that the DLA has elected to, and is capable of, correcting erroneous assessments based on the records of the AEUB. By not correcting the Complainant's assessments which are based on the errors in the AEUB record, the DLA has taken a prejudicial and inequitable position in relation to the Complainant's linear assessments.

The Complainant concluded that the subject assessments do not reflect the specifications and characteristics of the linear property on October 31, 2002. Further, based on the administrative practices of the DLA, corrections, changes and amendments are made to the linear property assessments and it is the Complainant's position that fairness and equity are achieved only when the administrative practices are applied consistently, fairly and without prejudice.

Legal Argument

The Complainant submitted that The Oxford English Dictionary, 2nd edition defines "characteristic" and "specification" as follows:

"Characteristic": a distinctive mark, trait, or feature; a distinguishing or essential peculiarity or quality.

"Specification": a detailed description of the particulars of some projected work in building, engineering, or the like giving the dimensions, materials, qualities etc., of the work, together with directions to be followed by the builder or constructor; the document containing this.

The Complainant argued that any essential features of the linear property that must be known or ascertained in order to apply the valuation standards in the Minister's Guidelines constitute the "characteristics" and "specifications" within the meaning of the section 292(2)(b) of the Act. For example, the Minister's Guidelines require that the DLA take into consideration the length of the pipeline in determining the base cost of the pipeline. Thus the length is a relevant specification and characteristic of the pipelines for

BOARD ORDER: MGB 057/04

the purpose of making an assessment. Likewise, the operating status and licensing status are essential and relevant characteristics and specifications of the pipeline. Therefore, an assessment should reflect the actual characteristics and specifications of the linear property.

The Complainant also argued that section 292 and section 293 of the Act require that the assessments be prepared in a fair and equitable manner. Therefore, assessments based on incorrect information are unfair and inequitable. In particular, fairness and equity are not achieved where the DLA relies on the AEUB records when the record for over 250 properties of a single taxpayer is incorrect. In such circumstances the assessments is manifestly wrong and must be corrected in order to achieve fairness and equity.

The Complainant acknowledged that section 292 does allow the DLA to prepare assessments based on the records of the AEUB, however exclusive reliance on the AEUB records is not mandatory. Specifically, the same section enables the DLA to request a report in certain circumstances. The Complainant argued that the legislature provided this discretion to the DLA in order to ensure that assessments correctly take into consideration the actual physical characteristics of pipelines, the actual operating status of pipelines and the actual licensing status of the linear property, in order to maintain fairness and equity.

In support, the Complainant referenced a previous decision of the MGB, Board Order MGB 168/01, where the MGB was faced with similar circumstances. The Complainant submitted in this case the MGB was required to determine whether a pipeline which was no longer operational was assessable on the basis that the AEUB records showed it being operational. The DLA argued that the Act, the Regulation and the Minister's Guidelines require the DLA to determine status of pipelines solely by the registered status at the AEUB. The MGB disagreed with the DLA and, based on the evidence, found the pipeline to be abandoned and subject to a 100% depreciation allowance. The Complainant submitted that this case should be applied to the subject complaints.

The Complainant further argued that the DLA is empowered by section 305 and section 312 of the Act to correct errors, omissions or misdescriptions of any information in the assessment roll or the assessment notice. It is argued by the Complainant that the subject inaccuracies constitute essential information for the purpose of the assessment roll and the assessment notices.

The Complainant argued that the DLA acts unfairly and inequitable where taxpayers are not treated in the same fashion. The administrative practices of the DLA is to correct the records of certain taxpayers on a basis other than the AEUB records where errors in the record are brought to the attention of the DLA. However, when the Complainant brought forward discrepancies and errors, the DLA refused to re-assess on the basis of the correct information.

SUMMARY OF THE RESPONDENT POSITION

The Respondent's position is based on the fact that the assessments of the subject linear property are based on the records of the AEUB, the authority given the DLA by the legislation, and the previous decision of the MGB.

AEUB

The Respondent brought forward a representative of the AEUB to provide information respecting the processes of the AEUB regarding the maintenance of and correction to the records of the AEUB. The representative submitted that the AEUB is the sole finder of fact in respect of pipeline license requirements. As such, it determines length of line and status in respect of operational capacity. If a record requires correction, only the AEUB has the authority to make the necessary change.

A license is the official AEUB record. A license is a paper document that contains the grant of licence together with all the information relating to a particular pipeline, including its specifications and characteristics. Authenticity of a licence may be proven by locating the signature of an authorised AEUB official, that appears on the face of the license. This signed paper document is the official AEUB record.

Data respecting the licenses is kept in two types of records held by the AEUB. One is known as the attribute record, and the other is referred to as a graphic record. The attribute record is an electronic copy of all the data contained on a license. Graphics records, which also form part of the record, may include base-maps and as-built maps. Graphic records are not considered an official record, but can be used as a helpful comparative tool in determining the correct length of a pipeline. Both AEUB records are regularly updated on a monthly basis and sold to industry service providers.

Errors may occur in the records for a variety of reasons. Physical changes in the pipeline may not always be recorded in the attribute file. For example, the actual length may not be the same as the recorded length because the as-built record was never filed. In some cases, segments of pipe may never have been constructed. In other cases, pipelines may have been abandoned. Reporting requirements over the years may also have differed to those presently in force, resulting in some records not being kept up-to-date. For instance, there was one case in which an amendment to a record was requested 20 years after a pipeline had been abandoned. In those days, an owner/operator had to obtain the consent of the AEUB before it could abandon a pipeline and so, quite possibly, it may have thought that the appropriate amendment to the records would have been made. This is no longer the case though; since 2000 a company must now file a report with the AEUB within 90 days of abandoning a pipeline.

BOARD ORDER: MGB 057/04

Errors in the record may also originate with the AEUB. Such errors may originate through any one or a combination of human errors in respect of data input, computerisation, and various program conversions and upgrades made to computer databases.

Discrepancies in the records may come to the AEUB's attention through a variety of methods. The first is through audit. Audits may be random or instigated where records appear to have discrepancies. Non-routine applications, which comprise approximately 9% of all license applications, will automatically be sent to audit. If an audit reveals non-compliance, then the AEUB has the authority to levy a penalty, such as a fine, upon the owner/operator of a pipeline. Alternatively, any interested party who has reason to believe that a record is inaccurate or that an owner/operator is not in compliance with licensing requirements may request the AEUB to review matters. This may lead to an audit. It should be noted here that the powers of the interested third party are limited in that there is a qualitative difference between a request for review and a request for correction of the AEUB record, the latter for which it has no authority.

By and large, the AEUB preferred method for finding and correcting errors is through a self-reporting system. Each license applicant must comply with regulatory requirements on an ongoing basis. To this end the onus is upon owner/operators to review their licensed pipelines to confirm that the data contained in the AEUB record matches with the physical characteristics of pipeline. Additionally, they are responsible for reporting any changes within the required reporting periods. In other words, a licensee is responsible to keep both the attribute and graphical records accurate. Where there is a difference between the AEUB record and physical characteristics of a pipeline, an owner/operator may make application for a Request for Amendment of the license issued in respect of that pipeline.

Compliance is encouraged through a voluntary self-disclosure mechanism. No penalties are levied against owner/operators who come forward to correct the record through voluntary self-disclosure. This self-reporting system, which was implemented in 1996, marks a significant shift in the role of the AEUB with respect to the extent of its responsibility and involvement in monitoring compliance.

In the present case, the process of correcting the record did not begin with the Complainant. It commenced with an AEUB audit. It was further discovered that in addition to inadvertent data errors, there were numerous physical changes in segments of pipelines, as well as changes in operational status that were not reflected in the AEUB records. The Complainant filed applications to amend the record in bulk and somehow the package found its way to the bottom of the list. The AEUB approved of the amendments to the records as requested by the Complainant because it was satisfied that the amendments contained correct data. Subsequently, a new license was issued.

The Respondent stated, in response to the length of time needed to amend the records, that the Complainant is the one responsible for the accurate portrayal of the information at the AEUB in the first instance and it is the Complainant's responsibility to ensure timely identification of the non-compliance issues.

Preparation of Linear Property Assessments

The Respondent submitted that the DLA obtained an electronic data record from the AEUB in October of 2002. This data is a monthly batch record transcribed by the AEUB from all approved pipeline licenses. The DLA then uses the relevant portions of the information and applies the relevant valuation and ownership standards as set out in the legislation.

Legislative Scheme

The Respondent submitted that the subject assessments were prepared in accordance with the legislative requirements and they were properly based on the records of the AEUB as of October 31, 2002.

The Respondent submitted that linear property assessment is a regulated assessment and the overall legislative assessment scheme is the Act, the Regulation, the Minister's Guidelines and the 2002 Alberta Linear Property Assessment Manual (the Manual) that is part of the Minister's Guidelines. In the Act section 292 states, in part, that each assessment must reflect the valuation standards and the specifications and characteristics, as set out in the records of the AEUB as of October 31. Further, the Regulation, in section 6, states the assessor must follow the procedures set out in the Minister's Guidelines. With respect to the use of the word "must" within the legislation, this provides that it is mandatory, not discretionary.

The Respondent submitted that in section 292 of the Act, the use of a report is discretionary and may be used in situations where the AEUB record is incomplete or does not exist, for example with other types of linear property. It is important to read this section in context of the reference to the AEUB records that are already referenced.

Applications to AEUB

In response to the position of the Complainant that the AEUB records did not reflect the actual status of the pipelines and that applications were made to correct the record, suggesting that it takes months to correct the record, the Respondent submitted that the industry has a requirement to report information, to comply with the appropriate legislation and to ensure the information is complete, correct and up-to-date. The Respondent submitted it is the AEUB that updates its records.

The Respondent submitted that it was the Complainant who failed to complete the statutory reporting requirements to the AEUB as of October 31, 2002. Simply making an application to the AEUB for abandonment and correction of duplicates or errors does not mean that the AEUB approves of or acknowledges the accuracy of the contents of these applications. The DLA simply takes completed information from the AEUB record and prepares the linear assessment in accordance with the Act.

The Respondent, in support of this position, referenced a decision of the MGB in Board Order MGB 133/03, in which the MGB acknowledged the duty of the company to ensure records are accurate at the AEUB. In support of this conclusion, the Respondent quoted two paragraphs from the decision which generally stated that the onus lies with the owner/operator of the linear property to ensure that the records of the AEUB are accurate

Fairness and Equity

In response to the Complainant's submission that the assessments are not fair and equitable with other similar property, the Respondent submitted that in a regulated assessment, fairness and equity are achieved with the proper application of the valuation standards and methods of assessment being done in a consistent manner. The position of the Respondent is that this has been done with respect to the subject assessments.

The Respondent submitted that the DLA is limited in the use of discretion unless it is expressly provided. The linear assessment system is regulated, comprehensive and not subject to much interpretation or discretion by the DLA or the MGB. The legislation clearly intends linear assessments to be distinct from non-linear assessments and the Respondent submitted that one cannot use concepts from non-linear assessments, such as the actual condition of specific property.

Further, and in response to the Complainant's contention that the assessments are not fair and equitable because the AEUB records are incorrect, the Respondent submitted the following points:

1. The official record of the AEUB was used and any changes identified by the Complainant had not yet been approved.
2. The DLA is not in a position to make a judgement on how to correct the AEUB record.
3. The assessed person is not in a position to say what facts are "correct" until such time as the AEUB approves the changes.
4. While the assessor has discretion to ask for information, it is not a requirement. The linear assessment process has moved past the self-reporting scheme that existed prior to the use of the AEUB record.

In support, the Respondent referenced a previous decision of the MGB, Board Order MGB 133/03, and submitted that the MGB concluded that the assessment under complaint was equitable within a standardized system. In addition, the Respondent submitted the MGB found that under the circumstances the assessment is fair because the Complainant chose not to register the pipeline as discontinued and therefore could not rely on the depreciation applicable in such a situation.

Physical Status

In response to the Complainant's argument that, based on a decision of the MGB in Board Order MGB 168/01, the assessment is to be based on the actual physical status of the property rather than the records of the AEUB, the Respondent submitted that first, the MGB is not bound by previous decisions, and second, the MGB erred on this point. The Respondent pointed to another MGB decision in Board Order MGB 099/03, in which the MGB stated the Respondent is entitled to rely on the characteristics of linear property as they appear in the record of the AEUB. The Respondent also referred to another decision of the MGB, Board Order MGB 133/03, in which the MGB stated that the Complainant in that case grounded its complaint on overly broad interpretative arguments and that an analysis of the procedural arguments demonstrates that, by basing the assessment on the records of the AEUB, the DLA prepared the assessments correctly.

Correction of the Assessment Roll or Assessment Notice

The Respondent submitted that the Complainant suggested that the DLA has the discretion to amend assessments; however, the Act provides the DLA with the discretion to amend an assessment only if there is an error, omission or misdescription on the roll. The Respondent's position is that first, amendments are reserved for errors which are not the case with respect to the subject complaints. Second, amendments are a discretionary power of the DLA not a mandatory power, and finally, the MGB does not have the authority to require the DLA to make an amendment to the assessment under section 305, section 312 or any other section of the Act.

In response to the position that the DLA has exercised discretion to produce amended assessments, the Respondent submitted that first, it is irrelevant to the accuracy of the assessments in question and second, the Complainant failed to indicate why these amendments may or may not have been made, and relies on hearsay and its own understanding of the situation.

In support of the Complainant's lack of knowledge, the Respondent made reference to the additional extract of the AEUB record for the purpose of ownership made on January 31, 2003. This additional extract of the record was to comply with the legislative requirements of section 308 to section 310 of the Act because not only must the

assessment reflect the specifications and characteristics as of October 31, 2002, but it must also reflect the correct ownership as of the date the assessment is prepared.

The Respondent submitted that certain types of changes were made, but the process still reflected the official AEUB record. The types of changes made and reasons are as follows.

1. Ownership is to be reflected as of the date the assessment is prepared, not at the same time as the determination of the specifications and characteristics.
2. Municipal allocation of pipelines is based on Alberta Municipal Affairs municipal code since this information is not available from the AEUB.
3. Specifications and characteristics of pipelines, not under complainant, but for which the assessed person could provide a copy of formal approval of an amendment prior to the October 31 date. This approval is not being entered into the electronic system and batch load.

Legal Argument

The legal arguments of the Respondent are included in the various subheadings above. This is done in recognition of the choice by the Respondent to merge legal arguments with any factual evidence.

SUMMARY OF PARTIES REBUTTAL

Complainant's Rebuttal

Facts

The Complainant acknowledges that the assessment is based on the characteristics and specifications of the linear property on October 31 of the year prior to the year the tax is imposed. It is the status of the property on this date that is relevant to section 292 of the Act. However, there is no date with respect to the records of the AEUB and the only date prescribed is December 31 as to when the operator must provide the report to the Linear Assessor.

Argument

The Complainant replied that the fundamental mistake in the Respondent's position is that it assumes the assessment system is based upon the assessment of "paper" as compared to "pipeline". The Respondent states the true physical characteristics and true specifications are irrelevant in the face of AEUB errors. The Respondent's position is a shift from the 100-year-old tradition that property taxation is based on the "ad valorem" principles.

BOARD ORDER: MGB 057/04

The Complainant submitted that the Respondent's position is narrow, restrictive and is inconsistent with the entire ad valorem assessment regime. The AEUB is the source of data, but not the exclusive determining factor. Further, where there is an error and the assessor chooses not to correct the error, then it is incumbent on the MGB to correct the error. In addition, the Respondent's erroneous interpretation undermines the nature and purpose of the complaint process for linear property. Errors and complaints become irrelevant. The actual status can have no bearing on the assessment. It ends the relevance of the actual pipeline physical traits. In support of this position the Complainant referred to Royal Montreal Golf Club v. Dorval [1946] 1 D.L.R. 50 (Que.Cir.Ct.) for the principles of the assessment of real property and the duties of the assessor.

The Complainant referred to Amoco v. Linear Assessor (27 September 2000) for a previous attempt of the DLA to prohibit linear property appeals. The Alberta Court of Appeal indicated that where a taxpayer's appeal rights are being truncated, clear and expressed language must be required to do so.

The Complainant argued that it is property, not paper that is being assessed, regardless of it being regulated property. The concept is that any valuation must reflect the property being assessed. This principle is not overridden by the Act or subordinate legislation. Further, the overriding second equitable principle is that like property must be treated in a similar fashion. The requirement for an assessment to be fair and equitable includes the right to have the actual status of the pipe reflected in the assessment.

With respect to the Respondent's position regarding changes made under the authority of section 305 of the Act, the Complainant submitted that the Respondent failed to acknowledge the number of changes that were made by way of recommendations to the MGB. These recommendations are based on information that came to the attention of the DLA after the October 31 date. In addition, the Respondent failed to inform the MGB about circumstances where recommendations were made to add property to the assessment roll based on data received after the October 31 date.

With respect to the Respondent's use of two previous decisions of the MGB being Board Orders MGB 133/03 and MGB 099/03, the Complainant submitted that there is a fundamental difference in that the Complainant was using the non-productive status of its pipeline to obtain "equivalent" depreciation. This is different in that one is seeking an interpretive change to create "equivalence", the other is attempting to have a pipeline assessment corrected.

Respondent's Rebuttal

Argument

The Respondent's position is that the complaints are based solely on policy, particularly the policy decision clearly and expressly made by the Legislature to rely upon the AEUB records for the preparation of the linear assessments.

The Respondent states that the Complainant's position is based on an incorrect use of the physical status of the property. section 292 of the Act does not use the term "physical status" but uses the term "specifications and characteristics" of the linear property"... as contained in the records of the AEUB or a report requested by the assessor. In addition, the Complainant places an onus on the DLA to make all efforts to ensure a true picture of the status of the property is reflected in all assessments.

The Respondent suggested that the Complainant has mistakenly taken general assessment principles and attempted to apply them in situations where they are not meant to be applied and where legislation has expressly dealt with the principle. The valuation system for linear property is based on a cost approach under a regulated or standardized system.

The Respondent argued that the Complainant's position, that the DLA has delegated his authority for the preparation of assessments to the AEUB, fails to recognize that the DLA is complying with the statutory duty to prepare assessments and has done so.

In regard to the equity issue raised by the Complainant, the Respondent argued that equity is achieved in property assessment in relation to the valuation standard for that property. Equity is achieved within the context of a consistent application of the valuation standard. As for the argument that the MGB can make assessments, the case quoted is for different property and is subject to a different assessment regime.

In response to the comments of the Complainant regarding previous practices of the Respondent, the Respondent acknowledged changes were made to its practices. However, the Respondent clarified that the changes related to: the ownership as of the date the assessment was issued, municipal allocation, and specifications and characteristics where the AEUB amended its records as of October 31. Practices had not changed in regards to: the electronic record, allowance for not-built property, and permitted/operational lines. The basis for the Respondent making these changes is contained in the Guidelines which allowed changes in certain instances.

FINDINGS

1. The specifications and characteristics of linear property are identified within the records of the AEUB.
 - a. The duty of the DLA is to prepare an assessment that accurately reflects the records of the AEUB including requests for change made to the AEUB prior to or on October 31.
 - b. The responsibility of the assessed owner/operator is to ensure the records of the AEUB are accurate by making a request for any change prior to or on October 31.
2. The records of the AEUB include all the information respecting a pipeline.
 - a. Applications for amendment of the AEUB records are part of the AEUB records.
 - b. The records of the AEUB as of October 31 are limited only to those applications for amendment that are before the AEUB on October 31.
 - c. In this specific case, Appendix C outlines specifically those requested changes that were made by the subject linear property owner/operator to the AEUB prior to or on October 31, 2002.
3. The onus, in the first instance, lies with the owner/operator of the linear property to ensure that the records of the AEUB accurately reflect the specifications and characteristics of its linear property on October 31. However, this onus is limited to making a request prior to October 31 as the authority to approve and process a request rests with the AEUB.
4. October 31 represents only the legislated date that must be used to determine the point in time that reflects the specifications and characteristics of the subject property. This date does not limit the DLA from making changes after October 31 based on the records of the AEUB, which illustrated the specifications and characteristics of the subject property prior to or on October 31.
5. In this specific case, the PPI-IDs listed in Appendix C were in the records at the AEUB prior to October 31. These records represent the specifications and characteristics of the listed linear property.
6. Following October 31, during the assessment year in question, the DLA made limited changes (e.g. owner/operatorship) to the assessments of similar linear property. These changes did not involve changes to the specifications and characteristics of similar property.
7. The requirements of using the records of the AEUB have been phased in over a period of years. During the specific assessment year all linear property owners/operators were treated equitably.

DECISION

The decision of the MGB is to allow the complaints respecting the PPI-IDs as listed in Appendix C for which applications for amendment of the AEUB record were properly filed with the AEUB on or before October 31. The DLA is instructed to make the changes to the assessments of these PPI-IDs in accordance with this document and provide the MGB with the corrected assessments within 21 days of the date of this Board Order. The MGB will then issue a supplemental Board Order with the corrected assessments.

The complaints as listed in Appendix D are denied for those applications for amendment that were filed with the AEUB after October 31, 2002.

It is so ordered.

REASONS

Finding Number 1

The specifications and characteristics of linear property are identified within the records of the AEUB.

1. The duty of the DLA is to prepare an assessment that accurately reflects the records of the AEUB, including requests for change made to the AEUB prior to or on October 31.
2. The responsibility of the assessed owner/operator is to ensure the records of the AEUB are accurate by making a request for any change to the AEUB prior to or on October 31.

The MGB accepts that the legislators made a specific directive that the specifications and characteristics of linear property are reflected on the specific date of October 31 and are based on the records of the AEUB. This direction is emphasized by the fact that amendments were made to this specific provision in the Act in 1996 and 1999, therefore the MGB does not accept that the legal cases presented by the Complainant can be used to insist that actual condition prevails. This case law was applied to other legislative schemes prior to this new legislative directive. Neither of the parties cited current case law, which directly deals with the current legislative scheme and the interpretation of section 292 of the Act.

The MGB places considerable emphasis on section 292 of the Act and does not accept the argument of the Complainant that the definition of linear property in section 284 limits the consideration to only the actual condition but rather to the actual condition as exists in the records of the AEUB. To the contrary, the MGB views the scheme of the

BOARD ORDER: MGB 057/04

legislation such that the definition of linear property and section 292 work in harmony to establish an effective and efficient means to equitably assess all linear property in the province.

In the MGB's view, the legislative scheme is grounded in the task of assessing the significant amount of linear property throughout the province. Section 292 provides an effective and efficient method to carry out this large task on an annual basis by rooting the information base for the preparation of the assessment in the AEUB records. Inherent in section 292 is the responsibility of the linear property owner/operator to report the status of the linear property to the regulatory agency, the AEUB. Keeping in mind also, that this property is buried and not available for inspection, section 292 roots the base information for preparing the assessment in the records of the AEUB.

However, under the legislation pertaining to pipelines, each pipeline must be licensed and the licensing requirements include all the information necessary to prepare an assessment. The requirements of the legislation would also appear to place a duty on the owner/operator of the pipeline to inform the AEUB of a change in status and apply for the abandonment of the pipeline. This has the effect of placing a duty on the owner/operator of the pipeline to ensure that the information in the AEUB records respecting their pipelines is correct. With the duty to ensure correct records at the AEUB, the onus for a correct assessment first lies with the assessed owner/operator. The logic would seem inescapable that by properly obtaining licences, reconciling proposed specifications with as-built specifications, registering changes in status and filing applications for abandonment, an assessment based on these records would be a correct assessment.

If an assessed owner/operator improperly reports information to the AEUB or fails to have the records changed to reflect the actual specifications and characteristics of their linear property, how could they expect, in light of the misinformation they have provided, to have a correct assessment? Therefore, it is only reasonable, considering the problems inherent in assessing pipelines, that reliance on the AEUB records is a reasonable and proper method to obtain the information necessary to undertake an assessment of the subject property.

In support of their positions on this broad issue, each party to this complaint has referred to previous MGB decisions and interpreted these decisions to their own benefit. Firstly, Board Order MGB 168/01 did not deal with the same fact scenario as the case at hand and involved the application of facts to a depreciation schedule in the Minister's Guidelines and the determination of a non-producing well. The MGB specifically stated in Board Order MGB 168/01 that the decision turned on the definition of a non-producing well and not on the clause in section. 292 of the Act. Board Orders MGB 133/03 and 099/03 also involved the interpretation of a depreciation schedule and the specific criteria set out in a depreciation schedule in the Minister's Guidelines. This case before the

MGB does not involve the interpretation of any depreciation schedule and the various related terms.

As a result of the scheme envisaged in section 292 of the Act, the linear property owner/operator has the onus to ensure that he/she has submitted to the AEUB up-to-date records as of October 31 in order to ensure that the information for preparing the assessment for the year properly reflects the specifications and characteristics as of that date. However, the DLA does not escape any responsibility as described in the following finding.

Finding Number 2

The records of the AEUB include all the information respecting a pipeline.

- a. Applications for amendment of the AEUB records are part of the AEUB records.
- b. The records of the AEUB as of October 31 are limited only to those applications for amendment that are before the AEUB on or before October 31.
- c. In this specific case, Appendix C outlines specifically those requested changes that were made by the subject linear property owner/operator to the AEUB prior to or on October 31, 2002.

The MGB finds that the AEUB is the agency that is expected to maintain all the information respecting pipelines. As previously stated, to construct a pipeline requires a licence from the AEUB which includes all the specification and characteristics of that pipeline, and any change in status must be registered with the AEUB. The MGB also stated that the onus lies with the assessed owner/operator to ensure that the records of the AEUB are correct and this is accomplished by the proper filing of an application for licence, properly informing the AEUB of any change in status and if an error is found, to properly apply for an amendment to the records of the AEUB. However, it must be recognized by all parties, that the authority of the AEUB is the licensing of pipelines, not the assessment of linear property. Because the AEUB has no interest in the assessment of linear property, one should not expect the AEUB to tailor its administrative practices to the assessment cycle.

There is no evidence before the MGB that the AEUB makes an effort to process all applications for amendment to its records prior to the October 31 date. In fact, it appears that, in the subject case, the applications for amendment somehow found their way to the bottom of the pile. This, in no way, places blame on the AEUB, but what it does highlight is that reliance on the records of a third party who has no stake in the outcome carries with it a danger that the assessments may be incorrect regardless of the proper actions of the assessed owner/operator to correct the record. Therefore, it is reasonable to conclude that the records of the AEUB include applications for amendments to the records.

The MGB gives a plain meaning to “the records of the Alberta Energy and Utilities Board” contained in section 292 of the Act. The reference to records in this case is plural and not to a specific record of the AEUB. The MGB comes to this conclusion after careful consideration of the arguments of the parties and the structure and scheme of the assessment of linear property contained in the Act. The MGB rejects the Complainant’s argument that section 292 should be given a very liberal interpretation and actual use of the linear property should be the sole criteria. The MGB has concluded that this liberal interpretation would give no meaning to the specific reference to AEUB records in section 292. As well, the MGB rejects the DLA’s very narrow interpretation of section 292 that there is only one specific record at the AEUB that should describe the specifications and characteristics of linear property. The acceptance of the DLA’s interpretation would mean that the legislators designated the AEUB as the assessor of linear property and the MGB does not see section 292 as going this far. This interpretation would also leave no meaning to the provision in section 292 where it states “or a report requested by the assessor under subsection (3)”. The MGB sees the use of the “or a report” clause solely in the context of inconsistency of records at the AEUB.

The MGB takes a purposeful approach to the interpretation of section 292 and legislative scheme for the assessment of linear property. The desired result is an effective and efficient system for assessing the massive amounts of linear property in the province which will be based on a set of records housed in the AEUB and which will reflect as close as possible the actual conditions of the linear property as of a specified date. Within this scheme the MGB does not accept that it was the intention of the legislators to penalize a linear property owner/operator who filed a change with the AEUB prior to October 31 on the grounds that the regulatory agency whose purpose is not the preparation of the assessment, did not process the change in time. The foundation of the scheme in the Act is to get as close as possible to the actual condition in order that the tax burden can be equitably shared recognizing that the exercise of preparing assessments is an annual event.

Finding Number 3

The onus, in the first instance, lies with the owner/operator of the linear property to ensure that the records of the AEUB accurately reflect the specifications and characteristics of its linear property on October 31. However, this onus is limited to making a request prior to October 31 as the authority to process a request rests with the AEUB.

As a result of the legislative requirements for the licensing of a pipeline, there is an onus on the owner/operator of the linear property to ensure that the records of the AEUB accurately reflect the specifications and characteristics of the pipelines. This onus includes making application for amendment of the records when an error is found.

However, once a proper application for amendment is filed, the onus shifts to the DLA to know of the application, monitor the application and ensure that the assessment does reflect the results of the application as this application is part of the records of the AEUB. This shift in onus is the result of relying on the records of a third party to perform a function in which the third party has no interest.

Finding Number 4

October 31 represents only the legislated date that must be used to determine the point in time that reflects the specifications and characteristics of the subject property. This date does not limit the DLA from making changes after October 31 based on the records of the AEUB, which illustrated the specifications and characteristics of the subject property prior to or on October 31.

The MGB accepts that the October 31 date is an arbitrary date set for the purpose of ensuring that the linear assessments fairly reflect specifications and characteristics of all similar property on that date. However, if errors are discovered to have existed on that date, it is reasonable to make corrections after that date, but only to the extent of reflecting the specifications and characteristics as of that date. These corrections can be made through section 305 of the Act or by recommendations to the MGB on the filing of a complaint.

As previously stated, the correction of errors in the assessment is based on the specifications and characteristics as of October 31. However, this is not to say that any error that comes to light in the year in which the tax is imposed should be corrected. The MGB has stated that the onus first lies with the assessed owner/operator to ensure that the records of the AEUB are correct and that there is an onus on the assessed owner/operator to properly file an application for amendment prior to the October 31 date if they are to benefit by a correction of the record after the October 31 date. If an assessed owner/operator fails to apply for an amendment prior to the October 31 date, it is reasonable for the DLA to assess based on the specifications and characteristics as shown in the records on the October 31 date, even if in error.

Finding Number 5

In this specific case, the PPI-IDs listed in Appendix C were in the records at the AEUB prior to October 31. These records represent the specifications and characteristics of the linear property.

With respect to this specific case, Tab 9 of Exhibit C7 outlines specifically the changes submitted to the AEUB and identifies the date the change was submitted and whether or not the AEUB processed the change. This exhibit was uncontested and the MGB places considerable weight on this evidence to reach the conclusion that the assessment must be

changed for those PPI-IDs in which change requests were submitted by the Complainant to the AEUB prior to or on October 31.

Finding Number 6

Following October 31, during the assessment year in question, the DLA made limited changes (e.g. ownership) to the assessments of similar linear property. These changes did not involve changes to the specifications and characteristics of similar property.

The MGB would agree that in the previous years the DLA has made corrections and recommendations for the correction of the assessment roll and assessment notices. However, since the MGB has found that the records of the AEUB include the properly filed applications for amendment, this issue pertains only to those applications that were improperly filed. Principally, the changes relate to matters outside the control of the assessed owner/operator such as applying the wrong municipal code or the improper entering of data by the DLA. Other instances relate to changes in ownership, which is not a specification or characteristic of the pipelines. On the whole, the MGB is of the opinion that generally, the DLA has attempted to assess the specifications and characteristics of pipelines based on the records of the AEUB that existed on October 31 as it relates to the year under complaint. Although the Complainant alleged changes were made, no specific evidence of changes to the specifications and characteristics of other similar properties in the subject assessment year was tabled before the MGB.

Finding Number 7

The requirements of using the records of the AEUB have been phased in over a period of years. During the specific assessment year all linear property owners/operators were treated equitably.

Based on the history of the assessment of linear property, the reliance on the records of the AEUB by the DLA is a change of practise; however the change from using the records as a base to a total reliance for the purpose of assessing pipelines has been gradual. The Complainant is aware, or should have been aware, of this change in practice. No evidence is before the MGB that the industry was not aware of the change to reliance on the records of the AEUB and considering the pipeline system of the Complainant, as indicated by the amount of assessment under complaint, it is reasonable to assume that they were aware of the change.

Regardless, the AEUB does require the proper reporting of the specifications and characteristics of the pipelines, and if the Complainant had been properly reporting the issue of an incorrect assessment would not have arisen. This is not to say that the Complainant did not follow the procedures to correct the record. The duty is on the DLA to recognize the applications for amendment as part of the record as of October 31, 2002.

COSTS

An issue of costs has been raised by the Respondent and the MGB directs as follows.

- If either party, including the Intervenor, wishes to proceed with an application for costs, they are to notify the MGB and the other parties no later than 21 days from the date of this order.

SUMMARY

Based on the arguments and evidence of the parties, the MGB has concluded that changes to the specifications and characteristics filed with the AEUB prior to October 31 must be recognized in the assessment year under complaint. The MGB has rejected the argument of the Complainant that the Act requires that the assessment be based on actual conditions and it has rejected the argument of the DLA that the assessment is based on only one specific record of the AEUB. The MGB applied the facts of this case to a purposeful and meaningful interpretation of the relevant sections of the Act and relied on the uncontested evidence that changes to the AEUB records for a portion of the PPI-IDs had been filed prior to October 31, 2002.

Dated at the City of Edmonton, in the Province of Alberta, this 25th day of June 2004.

MUNICIPAL GOVERNMENT BOARD

(SGD) C. Bethune, Presiding Officer

APPENDIX “A”

APPEARANCES

<u>NAME</u>	<u>CAPACITY</u>
M. Bourque	Bennett Jones, Counsel for the Complainant
G. Ludwig	Wilson Laycraft, Counsel for the Complainant
Robert Gagné	AEC Valuations (Western) Inc., Witness for the Complainant
A. Schutta	Atco Gas and Pipelines Ltd., Witness for the Complainant
B. Mason	Alberta Justice, Counsel for the Respondent
C. Zukiwski	Brownlee Fryett, Counsel for the Respondent
M. Vandenberg	AEUB, Witness for the Respondent
C. Uttley	Linear Property Assessment Unit, Alberta Municipal Affairs, Witness for the Respondent
D. Fisher	City of Edmonton, Intervenor
T. Rommings	City of Edmonton, Intervenor
K. Harris	City of Edmonton, Intervenor
D. Piecowye	City of Edmonton, Intervenor
René Gagné	AEC Valuations (Western) Inc., Observer
J. Fortin	Linear Property Assessment Unit, Alberta Municipal Affairs, Observer
D. Driscoll	Linear Property Assessment Unit, Alberta Municipal Affairs, Observer
R. Kozack	LandLink Geographics Inc., Observer
K. Durkin	Brownlee Fryett, Observer

APPENDIX “B”

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
C1	Linear Assessment Review of the Complainant, Vol. 1 of 2.
C2	Linear Assessment Review of the Complainant, Vol. 2 of 2.
R3	Brief of the Respondent, dated May 30, 2003.
C4	Legal Argument of the Complainant dated August 26, 2003.
R5	Brief of the Respondent, dated September 19, 2003.
I6	Notice of Intervention by the City of Edmonton, dated October 1, 2003.
C7	Rebuttal Brief of the Complainant, received at the hearing of October 6, 2003.
R8	Rebuttal Brief of the Respondent, dated November 6, 2003.
C9	Reply Brief of the Complainant, dated November 21, 2003.
C10	Will-Say Statement of A. Schutta.
C11	Will-Say Statement of R. Gagné.
C11A	Supplement to Will-Say Statement of R. Gagné.
R12	Will-Say Statement of M. Vandebeld.
R13	Will-Say Statement of C. Uttley.
R14	Query Tax Agent Outstanding dated 19 September 2003.
R15	2002 Assessment Year Detail Reports (PIPE), received at the hearing of October 6, 2003.
R16	Atco Pipelines 2003 Tax Year Valuations, received at the hearing of October 6, 2003.
C17	Submission letter from AEC Valuations (Western) Inc., dated August 25, 2003.
C18	Various e-mails from Kevin Halsted, Corinne Cormier, Sharon, Robert Gagné, Bob Cerkiewicz, André Schutta, and Russ Paccagnan, ranging in dates from October 28 to November 6, 2003.
R19	Recommendation of the Respondent.
R20	Letter of Respondent’s Counsel to Complainant, dated December 11, 2003.

APPENDIX “C”

ATCO Gas and Pipelines Ltd. - Pipeline records filed on or prior to October 31, 2002

PPI-ID Number	License/Line Number	Type of Record Change	Date Submitted to AEUB	AEUB Approval
897442	10705/22	Deleted Line - Duplicate	10-24-2002	Yes
551309	1918/19	Deleted Line - Duplicate	10-15-2002	Yes
823167	7409/7	Deleted Line – Never Built	10-25-2002	Yes
899175	7505/1	Deleted line – Abandoned and Removed	10-25-2002	Yes
897435	10705/10	Length Change	10-24-2002	Yes
585104	10705/12	Length Change	10-24-2002	Yes
897436	10705/14	Length Change	10-24-2002	Yes
897443	10705/24	Length Change	10-24-2002	Yes
585855	10844/2	Length Change	10-23-2002	Yes
587101	11208/1	Length Change	10-29-2002	Yes
600848	15122/4	Length Change	10-25-2002	Yes
600849	15122/5	Length Change	10-25-2002	Yes
600852	15122/8	Length Change	10-25-2002	Yes
550716	1654/17	Length Change	10-17-2002	Yes
551035	1819/1	Length Change	09-12-2002	Yes
551037	1819/12	Length Change	09-12-2002	Yes
940827	1819/35	Length Change	09-12-2002	Yes
615398	18237/2	Length Change	10-29-2002	Yes
615402	18237/7	Length Change	10-29-2002	Yes
615403	18237/9	Length Change	10-29-2002	Yes
551311	1918/21	Length Change	10-15-2002	Yes
621066	19416/13	Length Change	10-22-2002	Yes
621071	19416/6	Length Change	10-22-2002	Yes
552021	2181/14	Length Change	10-09-2002	Yes
554172	3050/1	Length Change	07-12-2002	Yes
555723	3573/1	Length Change	08-20-2002	Not Yet Sent Out
898902	4399/1	Length Change	10-17-2002	Yes
557526	4459/11	Length Change	10-23-2002	Yes
557530	4459/17	Length Change	10-23-2002	Yes
558238	4679/1	Length Change	10/16/2002	Yes
558313	4732/10	Length Change	10-23-2002	Yes
558324	4732/25	Length Change	10-23-2002	Yes
898967	4967/1	Length Change	09-09-2002	Yes
560732	5359/1	Length Change	09-24-2002	Yes
560733	5359-10	Length Change	09-24-2002	Yes

BOARD ORDER: MGB 057/04

PPI-ID Number	License/Line Number	Type of Record Change	Date Submitted to AEUB	AEUB Approval
899002	5393/1	Length Change	09-30-2002	Yes
549045	637/6	Length Change	10-17-2002	Yes
899054	6390/2	Length Change	10-24-2002	Yes
563890	6390/4	Length Change	10-24-2002	Yes
564207	6450/1	Length Change	09-26-2002	Yes
564217	6453/2	Length Change	10-28-2002	Yes
684947	7409/3	Length Change	10-25-2002	Yes
684948	7409/4	Length Change	10-25-2002	Yes
823168	7409/8	Length Change	10-25-2002	Yes
575707	8947/1	Length Change	10-12-2002	Yes
579960	9697/1	Length Change	10-24-2002	Yes
551306	1918/13	Operating to Abandoned	10-15-2002	Yes
551307	1918/14	Operating to Abandoned	10-15-2002	Yes
899018	5843/1	Operating to Abandoned	10-24-2002	Yes
564208	6450/11	Operating to Abandoned	09-26-2002	Yes

APPENDIX “D”

ATCO Gas and Pipelines Ltd. - Pipeline records filed after October 31, 2002

PPI-ID Number	License/Line Number	Type of Record Change	Date Submitted to AEUB	AEUB Approval
584726	10619/1	Deleted Line – Duplicate	12-10-2002	Yes
548086	118/30	Delete Line – Abandoned and Removed	12-24-2002	Yes
592811	12957/1	Deleted Line - Duplicate	12-10-2002	Yes
551744	2029/22	Deleted Line - Duplicate	01-21-2003	Yes
551969	2171/21	Deleted Line - Duplicate	01-15-2003	Yes
552240	2354/11	Deleted Line – Never Built	12-23-2002	Yes
898312	2594/72	Deleted Line – Abandoned & Removed	12-18-2002	Not Yet Sent Out
898923	4603/1	Deleted Line – Never Built	12-04-2002	Yes
568830	7576/21	Deleted Line – Duplicate	11-27-2002	Yes
899305	8727/1	Deleted Line – Duplicate	12-18-2002	Yes
548042	106/22	Length Change	01-07-2003	Yes
808375	106/54	Length Change	01-07-2003	Yes
586908	11138/1	Length Change	12-11-2002	Yes
586909	11138/2	Length Change	12-11-2002	Yes
588228	11520/1	Length Change	11-04-2002	Yes
548071	118/1	Length Change	12-24-2002	Yes
548074	118/12	Length Change	12-24-2002	Yes
548076	118/14	Length Change	12-24-2002	Yes
548078	118/17	Length Change	12-24-2002	Yes
548084	118/26	Length Change	12-24-2002	Yes
548091	118/36	Length Change	12-24-2002	Yes
685856	13079/1	Length Change	11-25-2002	Yes
690218	1425/48	Length Change	01-20-2003	Yes
550468	1534/4	Length Change	01-13-2003	Yes
550471	1534/7	Length Change	01-13-2003	Yes
550472	1534/8	Length Change	01-13-2003	Yes
602900	15600/2	Length Change	11-06-2002	Yes
608457	16723/14	Length Change	11-16-2002	Yes
608464	16723/24	Length Change	11-16-2002	Yes
608468	16723/30	Length Change	11-16-2002	Yes
610045	16958/1	Length Change	01-28-2003	Yes
610046	16958/2	Length Change	01-28-2003	Yes
616189	18438/2	Length Change	12-06-2002	Yes
551394	1951/1	Length Change	01-09-2003	Yes
551398	1952/22	Length Change	01-23-2003	Yes
621632	19521/5	Length Change	12-06-2002	Yes
534335	2029/112	Length Change	01-21-2003	Yes
534336	2029/113	Length Change	01-21-2003	Yes
551747	2029/61	Length Change	01-21-2003	Yes
551755	2029/91	Length Change	01-21-2003	Yes
551756	2029/92	Length Change	01-21-2003	Yes
897974	2029/97	Length Change	01-21-2003	Yes

BOARD ORDER: MGB 057/04

PPI-ID Number	License/Line Number	Type of Record Change	Date Submitted to AEUB	AEUB Approval
745995	2147/1	Length Change	Not known	Yes
551948	2150/10	Length Change	12-20-2002	Yes
551949	2150/11	Length Change	12-20-2002	Yes
898080	2172/34	Length Change	01-08-2003	Yes
551998	2172/52	Length Change	01-08-2003	Yes
552001	2175/1	Length Change	01-06-2003	Yes
552010	2176/17	Length Change	02-24-2003	Yes
552017	2178/10	Length Change	12-16-2002	Yes
552030	2183/1	Length Change	01-08-2003	Yes
552032	2184/10	Length Change	12-10-2003	Yes
552079	2219/1	Length Change	01-28-2003	Yes
552082	2220/12	Length Change	01-03-2003	Yes
690269	2354/9	Length Change	12-23-2002	Yes
552393	2526/14	Length Change	11-29-2002	Yes
552396	2526/17	Length Change	11-29-2002	Yes
552398	2526/21	Length Change	11-29-2002	Yes
552401	2526/24	Length Change	11-29-2002	Yes
552418	2526/47	Length Change	11-29-2002	Yes
650518	25600/1	Length Change	11-21-2002	Yes
534349	2594/106	Length Change	12-18-2002	Not Yet Sent Out
534354	2594/111	Length Change	12-18-2002	Not Yet Sent Out
534362	2594/121	Length Change	12-18-2002	Not Yet Sent Out
534368	2594/129	Length Change	12-18-2002	Not Yet Sent Out
534370	2594/132	Length Change	12-18-2002	Not Yet Sent Out
534377	2594/140	Length Change	12-18-2002	Not Yet Sent Out
552618	2594/17	Length Change	12-18-2002	Not Yet Sent Out
552619	2594/18	Length Change	12-18-2002	Not Yet Sent Out
552625	2594/24	Length Change	12-18-2002	Not Yet Sent Out
552631	2594/32	Length Change	12-18-2002	Not Yet Sent Out
552632	2594/33	Length Change	12-18-2002	Not Yet Sent Out
552635	2594/37	Length Change	12-18-2002	Not Yet Sent Out
552637	2594/39	Length Change	12-18-2002	Not Yet Sent Out
552638	2594/4	Length Change	12-18-2002	Not Yet Sent Out
552644	2594/49	Length Change	12-18-2002	Not Yet Sent Out
552646	2594/51	Length Change	12-18-2002	Not Yet Sent Out
552651	2594/56	Length Change	12-18-2002	Not Yet Sent Out
898310	2594/57	Length Change	12-18-2002	Not Yet Sent Out
552657	2594/62	Length Change	12-18-2002	Not Yet Sent Out
552687	2595/10	Length Change	01-16-2003	Yes
552688	2595/11	Length Change	01-16-2003	Yes
552694	2595/18	Length Change	01-16-2003	Yes
552696	2595/2	Length Change	01-16-2003	Yes
552700	2595/4	Length Change	01-16-2003	Yes
552703	2595/8	Length Change	01-16-2003	Yes
552704	2595/9	Length Change	01-16-2003	Yes

BOARD ORDER: MGB 057/04

PPI-ID Number	License/Line Number	Type of Record Change	Date Submitted to AEUB	AEUB Approval
657119	26999/1	Length Change	12-16-2002	Yes
695846	28593/4	Length Change	11-26-2002	Yes
553602	2912/10	Length Change	01-09-2003	Yes
553618	2912/30	Length Change	01-09-2003	Yes
554575	3105/3	Length Change	01-22-2003	Yes
898727	3295/12	Length Change	01-06-2003	Yes
554993	3295/14	Length Change	01-06-2003	Yes
554996	3295/3	Length Change	01-06-2003	Yes
556250	3861/10	Length Change	01-09-2003	Yes
898883	3931/1	Length Change	11-08-2002	Yes
556704	4117/1	Length Change	11-01-2002	Yes
556783	4156/3	Length Change	02-18-2003	Yes
556923	4219/1	Length Change	11-16-2002	Yes
898929	4718/1	Length Change	11-20-2002	Yes
558296	4719/1	Length Change	11-17-2002	Yes
898940	4799/1	Length Change	11-16-2002	Yes
700517	4864/1	Length Change	11-13-2002	Yes
560264	5229/13	Length Change	11-13-2002	Yes
560266	5229/3	Length Change	11-13-2002	Yes
560268	5229/6	Length Change	11-13-2002	Yes
560629	5341/20	Length Change	11-19-2002	Yes
561450	5677/1	Length Change	01-03-2003	Yes
561682	5754/4	Length Change	12-30-2002	Yes
899011	5754/9	Length Change	12-30-2002	Yes
899012	5761/1	Length Change	12-06-2002	Yes
899014	5761/3	Length Change	12-06-2002	Yes
562221	5895/20	Length Change	Not known	Yes
562231	5895/37	Length Change	Not known	Yes
562234	5895/40	Length Change	Not known	Yes
562241	5895/56	Length Change	Not known	Yes
562245	5895/74	Length Change	Not known	Yes
674798	5895/77	Length Change	Not known	Yes
690586	5895/9	Length Change	Not known	Yes
755405	6038/5	Length Change	12-13-2002	Yes
548992	625/13	Length Change	03-10-2003	Yes
548995	625/19	Length Change	03-10-2003	Yes
549001	625/29	Length Change	03-10-2003	Yes
549004	625/31	Length Change	03-10-2003	Yes
549009	625/38	Length Change	03-10-2003	Yes
549016	625/48	Length Change	03-10-2003	Yes
563542	6306/4	Length Change	12-12-2002	Yes
564230	6462/1	Length Change	03-10-2003	Yes
564231	6462/10	Length Change	03-10-2003	Yes
565880	6914/1	Length Change	11-02-2002	Yes
565881	6914/2	Length Change	11-02-2002	Yes

BOARD ORDER: MGB 057/04

PPI-ID Number	License/Line Number	Type of Record Change	Date Submitted to AEUB	AEUB Approval
567325	7231/4	Length Change	11-22-2002	Yes
567326	7231/6	Length Change	11-22-2002	Yes
675197	7231/5	Length Change	11-22-2002	Yes
899142	7231/8	Length Change	11-22-2002	Yes
684950	7455/3	Length Change	12-16-2002	Yes
568208	7455/8	Length Change	12-16-2002	Yes
568825	7576/1	Length Change	11-27-2002	Yes
568829	7576/2	Length Change	11-27-2002	Yes
568831	7576/4	Length Change	11-27-2002	Yes
746139	7828/24	Length Change	01-23-2003	Yes
570186	7828/4	Length Change	01-23-2003	Yes
549270	788/38	Length Change	01-20-2003	Yes
549290	788/70	Length Change	01-20-2003	Yes
577440	9253/1	Length Change	11-06-2002	Yes
577442	9253/3	Length Change	11-06-2002	Yes
586326	10946/1	Operating to Abandoned	12-20-2002	Yes
548072	118/10	Operating to Abandoned	12-24-2002	Yes
548095	118/6	Operating to Abandoned	12-24-2002	Yes
548097	118/8	Operating to Abandoned	12-24-2002	Yes
591643	12556/1	Operating to Abandoned	12-18-2002	Yes
591644	12556/3	Operating to Abandoned	12-18-2002	Yes
605579	16199/1	Operating to Abandoned	11-19-2002	Yes
551946	2149/2	Operating to Abandoned	12-27-2002	Yes
551953	2154/1	Operating to Abandoned	12-12-2002	Yes
898164	2354/58	Operating to Abandoned	12-23-2002	Yes
534358	2594/116	Operating to Abandoned	12-18-2002	Not Yet Sent Out
552627	2594/27	Operating to Abandoned	12-18-2002	Not Yet Sent Out
552636	2594/38	Operating to Abandoned	12-18-2002	Not Yet Sent Out
552641	2594/44	Operating to Abandoned	12-18-2002	Not Yet Sent Out
898309	2594/48	Operating to Abandoned	12-18-2002	Not Yet Sent Out
552650	2594/55	Operating to Abandoned	12-18-2002	Not Yet Sent Out
553069	2743/1	Operating to Abandoned	12-24-2002	Yes
553070	2743/2	Operating to Abandoned	12-24-2002	Yes
553071	2743/3	Operating to Abandoned	12-24-2002	Yes
553072	2743/4	Operating to Abandoned	12-24-2002	Yes
553073	2743/5	Operating to Abandoned	12-24-2002	Yes
553074	2743/6	Operating to Abandoned	12-24-2002	Yes
553075	2743/7	Operating to Abandoned	12-24-2002	Yes
553076	2743/8	Operating to Abandoned	12-24-2002	Yes
553077	2743/9	Operating to Abandoned	12-24-2002	Yes
898500	2818/1	Operating to Abandoned	11-29-2002	Yes
674290	2912/21	Operating to Abandoned	01-09-2003	Yes
554567	3105/1	Operating to Abandoned	01-22-2003	Yes
898728	3295/9	Operating to Abandoned	01-06-2003	Yes
557233	4387/1	Operating to Abandoned	12-31-2002	Yes

BOARD ORDER: MGB 057/04

PPI-ID Number	License/Line Number	Type of Record Change	Date Submitted to AEUB	AEUB Approval
557777	4538/1	Operating to Abandoned	01-20-2003	Yes
558286	4707/4	Operating to Abandoned	11-19-2002	Yes
700514	4816/1	Operating to Abandoned	11-19-2002	Yes
559430	5029/3	Operating to Abandoned	11-19-2002	Yes
560222	5215/2	Operating to Abandoned	01-07-2003	Yes
560224	5215/4	Operating to Abandoned	01-07-2003	Yes
560961	5438/1	Operating to Abandoned	03-10-2003	Yes
899013	5761/2	Operating to Abandoned	12-06-2002	Yes
562183	5866/3	Operating to Abandoned	01-21-2003	Yes
548993	625/15	Operating to Abandoned	03-10-2003	Yes
549005	625/32	Operating to Abandoned	03-10-2003	Yes
899102	6762/11	Operating to Abandoned	11-28-2002	Yes
565486	6762/9	Operating to Abandoned	11-28-2002	Yes
569966	7776/8	Operating to Abandoned	12-09-2002	Yes
577379	9219/1	Operating to Abandoned	01-23-2003	Yes