

**BOARD ORDER: MGB 080/04**

**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 AN APPEAL** to the Municipal Government Board (MGB) pursuant to section 15 of the *Assessment Complaints and Appeals Regulation AR 55/99* and section 11 of the *Assessment Complaints and Appeals Regulation AR 238/2000*.

**BETWEEN:**

Talisman Energy represented by Wilson Laycraft - Appellant

- a n d -

Municipal District of Greenview No. 16 represented by Reynolds Mirth - Respondent

**BEFORE:**

Members:

J. Schmidt, Presiding Officer  
S. Cook, Member  
F. Martin, Member

Secretariat:

M. d'Alquen

Upon notice being given to the affected parties, a hearing was held in Edmonton, in the Province of Alberta on April 20 and April 21, 2004.

This is an appeal to the Municipal Government Board (MGB) regarding property assessments entered by the Municipal District of Greenview in the 2000 and 2001 assessment rolls of the Respondent Municipality as follows.

<b>Year</b>	<b>Roll No.</b>	<b>Property</b>	<b>Assessed Value</b>
2000	309210	Improvement	\$5,299
2001	309210	Improvement	\$5,370
2001	310142	Improvement	\$3,680
2001	310143	Improvement	\$3,680
2001	310144	Improvement	\$3,680
2001	310146	Improvement	\$3,680
2001	310547	Improvement	\$4,830

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2001	311507	Improvement	\$5,510
2001	311508	Improvement	\$5,460
2001	311509	Improvement	\$5,340
2001	311510	Improvement	\$5,340
2001	311511	Improvement	\$5,510
2001	311512	Improvement	\$3,680
2001	311513	Improvement	\$5,460
2001	311514	Improvement	\$13,970

By consent of the parties, and in accordance with Part 3 of the *Assessment Complaints and Appeals Regulation 55/99 and 238/2000*, the right to a hearing before the appropriate assessment review board was waived, and the appeal was heard directly by the Municipal Government Board.

**OVERVIEW**

This appeal focuses on the proper interpretation of “pipelines” in section 284(1)(k)(iii) of the Act. The Appellant argues that certain improvements on 14 of its well sites are included by the definition of “pipelines”; therefore, it says these improvements are linear property, and are not assessable by the municipal assessor. The Respondent denies that the improvements in question fall within the Act’s definition of “pipelines”; rather, it says they are non-linear property which must be assessed by the municipal assessor.

**BACKGROUND**

**Parties**

The Appellant (Talisman) is involved in the business of extracting natural gas from wells, and transporting it by pipe for processing and distribution. The Respondent (the Municipality) is a municipality in the Province of Alberta, and contains many of Talisman’s well sites within its boundaries.

**Well Sites, Meter Runs, and Meter Boxes**

The Alberta Energy and Utilities Board (AEUB) requires gas well owners to install meters at well sites to measure the volume of gas extracted by their wells. Alberta’s extreme weather conditions sometimes cause unprotected gas meters to freeze. Therefore, the general practice in the industry is to enclose well site meters with improvements known as “meter boxes” or “meter skids”. Fifteen such “meter box” improvements form the subject of this appeal.

All the well sites relating to this appeal are approximately one acre in area, and have the same general layout. At each site, gas emerges from the well, goes through a valve at the well head,

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and then flows into a pipe. This pipe runs from the well head to a meter box, which is located at least 25 feet away from the well head for safety reasons. The pipe continues through a hole in the side of the meter box, on through the box, and out a second hole on the opposite side. Beyond the box, it passes through various valves or fittings for purposes such as injecting corrosion inhibitor. It then goes underground and continues on beyond the well site.

Inside each meter box is a meter run consisting of a meter and a valve. The meter measures the amount of gas transmitted, while the valve can be closed to reduce the rate of flow through the pipe, should this become necessary. Both the valve and the meter are operated by a small amount of “fuel gas” taken from the pipe through an “orifice fitting”. Fuel gas usually passes through a scrubber or “drip pot” to remove moisture, which would otherwise freeze and damage the meter. Most meter boxes have heaters to prevent freezing, and these heaters also run on fuel gas. Finally, most meter boxes also contain a remote telemetry unit (RTU) to transmit the information gathered at the well site to a central monitoring office. On one of the relevant well sites, a second identical enclosure houses the RTU, because special equipment was required to boost the signal to reach its destination. This enclosure was also assessed by the Municipality and appealed by Talisman.

Meter boxes come in a variety of shapes and sizes; however, all those forming the subject of this appeal are approximately six feet by four feet by seven feet, and come with a standard sized door and a window or sky-light. The walls and roofs consist of insulation sandwiched between layers of corrugated metal. The floors rest on steel beam substructures supported by piles to prevent subsidence. All meter boxes are prefabricated off site, and trucked in to well sites for installation. Meters and other equipment are already fixed in place when the boxes arrive on site.

Newer meter boxes look much different from those now under appeal, although they contain essentially the same equipment. The trend is toward smaller, lighter boxes, which are more efficient and easier to transport. New boxes are lifted above grade, with their floors resting on legs or stilts. The newest boxes are so compact that the equipment inside is accessed by opening a pair of panels, no more than two or three feet in height and width. These new boxes have no window, and there is no space for a person to enter. Their overall visual effect is similar to that of a large transformer.

### **Standardization of Linear Property Assessment**

In about 1983, a system was created to standardize assessment rates for pipelines and well sites in Alberta. The system works by applying standard per kilometre rates to various categories of “pipelines”. “Pipelines” are defined as including certain property generally located at well sites; thus, this property is assessed as part of a pipeline by the designated linear assessor. Property falling outside the definition of “pipelines” is not linear property, and continues to be assessable by the municipal assessor.

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### ISSUE

1. The main issue is whether or not the assessed improvements fall within the meaning of linear property as defined under the Act. In order to decide this matter the MGB must address the following specific issues.
  - a. Are the meter boxes well head installations or improvements located at a well site?
  - b. Are the meter boxes and the meter runs inside them separable, or are they to be considered as an integrated unit?
  - c. Are the meter boxes intended or used for any of the purposes described under section 284(1)(k)(iii)(C) of the Act?
  - d. Are the meter boxes used for the protection of well head installations?
  - e. Are the meter boxes “buildings” within the meaning of s. 284(1)(k)(iii)(G) of the Act?
  - f. Do the same considerations apply to the single improvement which houses special equipment required to boost the RTU’s signal to reach its destination?

### LEGISLATION

Section 284(1)(k) of the Act defines linear property. The subsection most relevant to this appeal is 284(1)(k)(iii), which defines “pipelines”. In particular, argument focussed on 284(1)(k)(iii)(D), 284(1)(k)(iii)(C)(I), 284(1)(k)(iii)(C)(IV), 284(1)(k)(iii)(F), and 284(1)(k)(iii)(G).

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

*(k) “linear property” means*

*(iii) pipelines, including*

- (A) any continuous string of pipe, including loops, by-passes, cleanouts, distribution meters, distribution regulators, remote telemetry units, valves, fittings and improvements used for the protection of pipelines intended for or used in gathering, distributing or transporting gas, oil, coal, salt, brine, wood or any combination, product or by-product of any of them, whether the string of pipe is used or not,*
- (B) any pipe for the conveyance or disposal of water, steam, salt water, glycol, gas or any other substance intended for or used in the production of gas or oil, or both,*
- (C) any pipe in a well intended for or used in*
  - (I) obtaining gas or oil, or both, or any other mineral,*
  - (II) injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,*
  - (III) supplying water for injection to an underground formation, or*
  - (IV) monitoring or observing performance of a pool, aquifer or an oil sands deposit,*

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- (D) *well head installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph (C) or for the protection of the well head installations,*
- (E) *the legal interest in the land that forms the site of wells used for any of the purposes described in paragraph (C) if it is by way of a lease, licence or permit from the Crown, and*
- (E.1) *the legal interest in any land other than that referred to in paragraph (E) that forms the site of wells used for any of the purposes described in paragraph (C), if the municipality in which the land is located has prepared assessments in accordance with this Part that are to be used for the purpose of taxation in 1996 or a subsequent year, but not including*
- (F) *the inlet valve or outlet valve or any installations, materials, devices, fittings, apparatus, appliances, machinery or equipment between those valves in*
  - (I) *any processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facilities, or*
  - (II) *a regulating or metering station,**or*
- (G) *land or buildings; ... .*

The following provisions define “improvement” and “structure” under the Act.

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

- (j) *“improvement” means*
  - (i) *a structure,*
- (u) *“structure” means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land; ... .*

Section 6 of Alberta Regulation 289/1999 sets out the valuation standard for linear property; Regulation 289/1999 derives its authority from the Act.

*6(1) The valuation standard for linear property is that calculated in accordance with the procedures referred to in subsection (2).*

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

Section 293 of the Act sets out the duties of assessors to assess in a fair and equitable manner.

*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*

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- (b) follow the procedures set out in the regulations.*
- (2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.*
- (3) An assessor appointed by a municipality must, in accordance with the regulations, provide the Minister with information that the Minister requires about property in that municipality.*

Section 499 of the Act outlines the jurisdiction of the MGB with respect to decisions it can make after a hearing. Section 499(2)(a) is of particular note with respect to the parties' arguments concerning equity.

*499(2) The Board must not alter*

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

**SUMMARY OF APPELLANT'S POSITION**

**Section 284(1)(k)(iii) of the Act**

Talisman submitted that the relevant issue is the proper interpretation of “pipelines” in section 284(1)(k)(iii) of the Act. In particular, it brought the MGB’s attention to subsections 284(1)(k)(iii)(D), (C)(I), and (C)(IV), and argued that meter boxes meet the requirements of these subsections because they are:

- (a) improvements; and
- (b) located at a well site; and
- (c) intended for or used for either
  - i) monitoring or observing the performance of a pool, or
  - ii) obtaining oil or gas.

As a supplementary argument, Talisman suggested their meter boxes could be viewed as “intended for the protection of well head installations”, thus bringing them within the definition under subsection 284(1)(k)(iii)(D).

(a) and (b): Improvements located at a well site

Talisman noted that the comprehensive definition of “improvement” under the Act includes “structure”, which in turn is defined as “a building or thing ...”. Thus, whether or not they are buildings, the meter boxes must be “improvements”. Since the meter boxes in question are also all located at a well site, Talisman submitted that they meet requirements (a) and (b) above.

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### (c)(i): intended for or used for monitoring or observing pool performance

Talisman stressed two points to support the position that its meter boxes are used for the purpose of monitoring or observing a pool. First, it said that meter box enclosures are integral parts of complete “metering facilities”, consisting of the meter box shells and the equipment within them. Meter runs are incorporated into the meter boxes as they are built, and each box - complete with equipment - is trucked to its site as a unit for installation. Talisman also noted that its meter boxes would not exist but for the meters within them, which would freeze without the necessary protection. This consideration supports the position that the protective structures of the meter boxes are necessary to the metering operation, and are thus integral components of single metering facility units.

Second, Talisman pointed to the evidence of Mr. Belanger, P. Eng., a senior engineer familiar with the relevant sites and the workings of well site equipment. He testified that the meter at each well measures gas production from the part of the resource pool tapped by that well; this data helps geologists determine whether to reduce flow to preserve aquifer pressure and avoid drawing water. Given this evidence, Talisman argued that metering amounts to monitoring or observing pool performance. Moreover, since the meter box enclosures are simply components of metering facilities, they too must be used to monitor or observe a pool.

### (c)(ii): intended for or used for obtaining gas

Talisman suggested that another ground for including the meter boxes as part of “pipelines” is that they are used for obtaining gas. In support of this position, it pointed to Mr. Belanger’s evidence that the Alberta Energy Utilities Board (AEUB) requires Talisman to maintain a meter at each site. It said this requirement means that for practical purposes, metering facilities are necessary to obtain gas, since gas cannot be obtained legally without them. As argued under (c)(i), meter boxes are simply components of metering facilities. And since the metering facilities are used for obtaining gas, so are the meter box enclosures that help make them up.

### **Intended for the Protection of Well Head Installations**

As a supplementary argument, Talisman submitted that its meter boxes can be viewed as “intended for the protection of well head installations”, thus bringing them within the definition of “pipelines” through subsection (D) alone. In support, it pointed to the evidence of Ms. Bielecki, Supervisor of Commodity, Property, and Corporate Taxes with Talisman. She said that each metering facility houses controls for a valve that can be used to shut down the well head. This function is necessary for the protection of well heads; thus, the meter boxes protect well head installations indirectly, and should be included as part of “pipelines” on that account.

### **Subsection G**

Having argued that the definition of “pipelines” catches its meter boxes by virtue of subsections 284(1)(k)(iii)(D), (C)(I), and (C)(IV), Talisman went on to counter any suggestion that they are excluded by subsection 284(1)(k)(iii)(G), which reads

“But not including ... land or buildings.”

First, Talisman submitted that its meter boxes are not “buildings” in the ordinary sense of the term; rather, they are integral parts of metering facilities, which would not exist but for the equipment within them. Comparing a meter box with an ordinary sized building underscores this point, since

“putting the confined meter structure beside a structure that would clearly be a building, such as a structure housing a compressor station, would highlight the differences between the two even on a cursory inspection.” (Appellant’s Brief, page 12)

Second, Talisman argued that the intent of 284(1)(k)(iii)(G) is only to exclude land and buildings that are not already included by other subsections of the definition; since 284(1)(k)(iii)(D) explicitly includes meter box type structures, subsection 284(1)(k)(iii)(G) cannot be intended to exclude them.

Talisman backed up its interpretation by considering subsection (G)’s historical roots in the *Electric Power and Pipeline Assessment Act* (EPPA). The corresponding section in the EPPA excluded from “pipelines” any

“land or buildings or structures *not otherwise mentioned in this clause*” (emphasis added).

Talisman argued that the new Act preserves the intent of the EPPA, and only simplifies its language; in other words, the phrase “not otherwise included” is redundant, so the drafters of the Act left it out. The testimony of Mr. Jesse, AMAA, supports this proposition. Mr. Jesse was involved with a committee charged with considering transition from the EPPA to the new Act; he testified the new Act was never intended to change the meaning of the EPPA definition.

### **A “Purposive” Interpretation**

Talisman submitted that the MGB must adopt a purposive interpretation of section 284(iii)(k). Such an interpretation takes into account not only the words of the definition, but also a contextual web including historical practice with respect to standardized assessments, practice in other municipalities, the intent of standardization as well as other legislative provisions and jurisprudence. A significant body of case law was cited in support of a purposive approach. [For example: R v. Popovic (62 DLR (3d) 56, SCC) was cited to show that earlier versions of



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legislation may aid in interpreting the proper meaning of a current provision; Rizzo v Rizzo Shoes Ltd. (Re), [1998] 1 SCR 27 was cited to show that the words of an act be read in their entire context, and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, as well as the intention of Parliament; Quebec (Communaute Urbaine) v. Corp. Notre Dame de Bon Secours, [1994] 3 SCR 3 was cited as authority that the MGB's interpretation of section 284(iii)(k) must consider the underlying purpose of the Act, with no predetermined presumptions, and that substance must prevail over form to the extent consistent with the wording of the Act.]

### Historical Perspective

To assist the MGB with a purposive interpretation, Talisman entered into evidence "Assessment Commissioner's Bulletin 2/86" (the Bulletin). This Bulletin shows that industry and Alberta Municipal Affairs (the Department) deemed "pipeline" under the EPPA to include

"all equipment, both surface and subsurface, as well as any shelters or covers, used in the production of the product at the well site.

Where incidental equipment is located at a well site, and:

- a) only production activity is carried on, the incidental equipment then supports the production and is included under the Electric Power and Pipeline Assessment Act (standardized assessment).
- b) production activity and processing is carried on, the incidental equipment is then included with the particular facility as found."

In view of its historical acceptance, Talisman argued that the Bulletin's interpretation should continue to apply to the definition of "pipelines" under the new Act. It reminded the MGB that the Act was not intended to change the meaning of the EPPA, but only to clarify its wording; moreover, it noted that there are no new Departmental communications to signal a change of interpretation. Talisman submitted that these considerations provide grounds to conclude that the Bulletin's interpretation accurately describes the meaning of "pipelines" under the new Act. The Bulletin's interpretation focuses on production activity to identify facilities falling outside the definition. Since no processing occurs in the meter boxes, they must fall under the definition of "pipelines" in both the Act and the EPPA.

As further evidence that meter boxes are included under the definition, Talisman pointed to the evidence of Mr. Jesse. Mr. Jesse was a senior assessor with the Department in the early 1980s, and played a leading role in creating the standardized system for linear assessment. He testified that the costs of buildings and shelters were factored into the calculation of the standardized rates, and that meter boxes were therefore included as linear property. Talisman also pointed to the evidence of Mr. Driscoll (the current chief assessor for regulated linear property) as summarized in *Talisman Energy Inc. v. Lakeland County* (Board Order MGB 011/02). His

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reported testimony shows Departmental policy has not changed since it was formulated under Mr. Jesse; thus, meter boxes continue to be included in the linear rates.

### **Absurd Results**

Talisman also submitted that absurd consequences result from reading section 284(1)(k)(iii) too literally, and that these results are avoided by a purposive interpretation. One absurd consequence of a literal interpretation is that it frustrates the purpose of rate standardization. The purpose of rate standardization is to avoid the expense of inspecting and assessing each site separately; however, if meter boxes are not linear property, then they must be individually inspected, thus frustrating the purpose of the Act. A second absurd consequence of a literal interpretation is that it excludes everything from the linear rates. This occurs because a literal reading insists on finding each individual component of included facilities listed in the definition; however, since the definition does not list individual components, everything other than the pipe itself becomes excluded. Talisman submitted that a purposive, common sense interpretation avoids this absurd result because it includes components of included facilities.

### **Equity**

Talisman argued that whereas the Act requires assessments to be equitable, assessing the meter boxes as non linear property is unfair for at least two reasons. First, to allow the Municipality to assess the meter boxes would amount to double taxation since they are already taxed in the standard linear rates. Second, the Municipality's assessment is inequitable because it is out of step with the practice of most other municipalities in the Province of Alberta. Most municipalities in the Province regard meter boxes as linear property and do not assess them.

### **Previous Board Decisions**

In addition to the case law cited above, Talisman referred to Board Order MGB 011/02, which it claimed was "on all fours" with the present circumstances. In that decision, the MGB considered a single meter box, which performed a similar function to those now under appeal. Having considered the evidence then before it, the MGB found this meter box was an integral part of a metering facility, which operated for

"among other things, the monitoring or observing of the pool or reservoir as per section 284(1) of the Act".

In addition, having looked at the indices of "purpose, size, usage, mode of erection and installation, and the historical content of the governing legislation" it found that the meter box was not a building within the meaning of the Act. Accordingly, the meter boxes were included in the definition of linear property under s. 284(1)(k)(iii)(D) and (C), and therefore outside the scope of municipal assessment.

**SUMMARY OF RESPONDENT'S POSITION**

**Section 284(1)(k)(iii) of the Act**

The Municipality submitted that the unambiguous meaning of section 284(1)(k)(iii) excludes the meter boxes in question from the definition of linear property. It said they do not qualify under subsection 284(1)(k)(iii) (D) because they are:

- a) not well head installations
- b) not used or intended for the protection of well head installations
- c) not used for the purposes described in subsection (C), including monitoring or observing a pool, and obtaining gas.

In support of (a) the Municipality noted that in all cases the well head is located at least 25 feet away from the meter box due to safety regulations. The well head installations are thus distinct from and do not include the meter boxes. In support of (b), the Municipality noted that the meter boxes do not cover or protect well head installations; rather, they protect meter runs, which are not well head installations. In support of (c), the Municipality submitted that the purpose of the meter boxes is neither to observe a pool nor to obtain gas; rather, their purpose is to protect the equipment inside them. In addition, the legal obligation to place meters at well sites does not mean the meter boxes are used to obtain gas; rather, the meters measure gas after it has been obtained.

In view of the above, the Municipality submitted that Talisman's meter boxes do not meet the requirements of subsections 284(1)(k)(iii)(D), (C)(I) and (C)(IV), which are the only possible sections that might bring them within the definition of "pipelines". Hence, Talisman's meter boxes are not linear property and are assessable by the municipal assessor.

**Subsection G**

Having argued that subsections 284(1)(k)(iii) (D), (C)(I), and (C)(IV) do not cover Talisman's meter boxes, the Municipality went on to submit that subsection (G) specifically excludes them as "buildings" in any case. In support, the Municipality argued that the word "building" is not defined under the Act, and should therefore be interpreted in the ordinary sense of the word. Moreover, it said the meter boxes in question *are* buildings in the ordinary sense: they have four walls, a roof, a window, a door, insulation, heating, and a reinforced steel floor. Although size is not crucial, the meter boxes are also big enough for a person to work in, being about six feet by eight feet by seven feet.

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The Municipality backed up this argument by suggesting that the meter boxes under appeal are consistent with standard definitions of “building”. For example, Black’s Law Dictionary, says a building is a

“structure designed for habitation, shelter, storage, trade, manufacture, religion, business, education and the like. A structure or edifice inclosing space within its walls, and usually but not necessarily covered with a roof.” (Black’s Law Dictionary (6<sup>th</sup> ed.) at 194-5.

Finally, the Municipality noted that the meter boxes under appeal match the description of a “relocatable metal oilfield building” in the 1984 Department Manual.

### **A “Purposive” Interpretation**

The Municipality agreed with Talisman that the MGB should adopt a purposive approach to interpretation. However, it submitted that the purpose of the Act is to ensure that all assessable property is fairly assessed. This purpose would be frustrated if the meter boxes were excluded from the definition of “pipelines”, despite the clear wording of the Act.

In response to Talisman’s reference to the EPPA, the Municipality submitted that the only legislation relevant to the current appeal is the Act. While it is permissible to look at the EPPA to help interpret current provisions, the changes between the old and new definitions of “pipeline” are not significant; thus, the interpretation that applies to the Act’s definition should also have applied to the EPPA. In short, past misinterpretation of the EPPA definition is no reason to continue to misinterpret the current provision.

In response to Talisman’s reliance on “Assessment Commissioner’s Bulletin 2/86”, the Municipality argued that the Bulletin is irrelevant, because section 1.005 of the “Linear Property Assessment Manual” (Appendix II to the Minister’s Guidelines) specifically withdraws it. The Guidelines clearly specify that the Bulletin is of no force or effect, and that the current Act should be used to define pipelines.

The Municipality also introduced evidence to cast doubt on Talisman’s assertion that the Department included the cost of shelters such as meter boxes when it calculated the standardized rates. It pointed to the evidence of Mr. Affolder, formerly the municipal assessor with the Municipality. Mr. Affolder presented a list of included costs summarized from a Department document written at the time of, or shortly before, the introduction of the standardized system. Mr. Affolder indicated that while “shelter” is listed as an included cost for some well status groupings, it is not listed as a cost for the status grouping relevant to the well sites now under consideration: i.e., status grouping #3 (gas flow). In addition, he suggested that the “shelters” which are listed for other status groupings are dome-like fibreglass structures, which in some locations cover the actual well heads.

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In response to the charge that a literal interpretation yields absurd results, the Municipality declared that on the contrary, it is Talisman's interpretation that is illogical. When both metering and processing occur in a meter box, Talisman regards it as an assessable building. However, if the processing equipment is removed, then the meter box becomes non-assessable linear property. Thus, a meter box enclosure could be a building one day, and not a building the next, which is absurd.

Lastly, the Municipality denied that its meter box assessments are inequitable. It said there is no double taxation, because the standardized rates do not factor in the costs of the meter boxes. It added that in any event, the total included costs amount only to a fraction of the listed equipment's true market value, even after adjustment to today's dollars. Furthermore, the Municipality argued that its assessment is equitable, because all similar well sites within its boundaries were assessed in the same way.

### **Previous Board Decisions**

In response to Talisman's reliance on Board Order MGB 011/02, the Municipality argued that as an administrative tribunal, the MGB is not bound by its previous decisions and must come to a conclusion based on the evidence and argument before it. The boxes currently under complaint are quite different from the one considered by MGB 011/02, because they are larger, easier to work in, and at ground level rather than raised on stilts.

The Municipality also noted that Board Order MGB 011/02 did not find that the meter box then in question was a well head installation. Furthermore, Board Order MGB 192/99 considered section 284(1)(k)(iii) and found that "protection" under s. 284(1)(k)(iii)(D)

"is for the well head installation rather than both the well head installations and other improvements."

Therefore, the Municipality argued that buildings or other improvements such as meter boxes that protect equipment other than well head installations do not fall under the definition of linear property by virtue of subsection 284(1)(k)(iii)(D).

### **FINDINGS**

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB finds the facts in the matter to be as follows.

1. The meter boxes are improvements located at a well site.
2. The meter boxes and the equipment within them form integrated metering facilities.

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3. One purpose of the measuring facilities is to monitor resource pools.
4. The meter boxes are not buildings within the meaning of section 284(1)(k)(iii)(G) of the Act.

In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

### DECISION

The appeal in respect to the assessment is allowed and the municipal assessment is reduced to 0.

It is so ordered.

### REASONS

**Main Issue: Do the assessed improvements fall within the meaning of linear property as defined under the Act?**

The broad issue in this appeal is whether the meter boxes under consideration are linear property as defined under the Act. If they are linear property, then they are included under the standardized assessment process; consequently, they are beyond the municipal assessor's power to assess. On the other hand, if the improvements are *not* linear property, then the municipal assessor must assess them.

The Act contains a detailed definition of linear property in section 284(1)(k). In particular, 284(1)(k)(iii) defines "pipelines", which are the type of linear property relevant to this appeal. Section 284(1)(k)(iii) (A) to (E) specifies what elements to include as part of a pipeline; section 284(1)(k)(iii)(F) and (G) specifies what elements to exclude.

The most prominent subsections in the current context are subsections 284(1)(k)(iii)(D), (C) and (G).

The relevant starting point is 284(1)(k)(iii)(D), which says that pipelines include:

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

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Subsection (C) then describes four purposes, including

- “(I) obtaining gas or oil, or both, or any other mineral, and
- ...
- (IV) monitoring or observing performance of a pool, aquifer, or an oil sands deposit”

Finally, subsection (G) stipulates that improvements are not linear property if they are “buildings”.

Consideration of the above legislation in relation to the parties’ submissions and evidence suggests the following sub issues.

- a. Are the meter boxes well head installations or improvements located at a well site?
- b. Are the meter boxes and the meter runs inside them separable, or are they to be considered as an integrated unit?
- c. Are the meter boxes intended or used for any of the purposes described under section 284(1)(k)(iii)(C) of the Act?
- d. Are the meter boxes used for the protection of well head installations?
- e. Are the meter boxes “buildings” within the meaning of s. 284(1)(k)(iii)(G) of the Act?
- f. Do the same considerations apply to the single improvement which houses special equipment required to boost the RTU’s signal to reach its destination?

Sub-issue (a): Are the meter boxes well head installations or improvements located at a well site?

Whether or not Talisman’s meter boxes are well head installations, the MGB finds they are certainly improvements located at a well site. “Improvement” is defined under section 284(1)(j)(i) to include “a structure”. “Structure” is further defined under 284(1)(j)(u) to include,

“a building or other thing erected or placed in, on, over, or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land.”

The MGB is satisfied that Talisman’s meter boxes are “things erected on or over land”. They are therefore “improvements” under the Act by virtue of being “structures”. Finally, there is no doubt that the improvements in question are all located at well sites.

Sub-issue (b): Are the meter boxes and the meter runs inside them separable, or are they to be considered as an integrated unit?

The MGB is satisfied that the relation between a meter box enclosure and the meter run within it is so close that the two should be regarded as an integrated unit for the purposes of the Act. This conclusion is supported by the following considerations. First, the MGB accepts that meters

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would freeze but for the shelters which protect them; thus, the meter box enclosures are necessary for the proper functioning of the meters. Second, the size and overall design of the meter box enclosures appear geared to accommodate the meter runs within them; ultimately, the evidence suggests the enclosures serve as protective shells for the meter runs and little else. Third, the evidence showed that meter boxes are prefabricated off site as complete units with meter runs already attached. The complete units are then trucked in to well sites for installation. Thus, meter boxes are constructed, transported and used as single integrated units. Fourth, previous MGB decisions and the overall purpose of the Act support the conclusion that meter boxes are integrated metering facilities. In Board Order MGB 11/02 the MGB found

“that the function of the meter structure is a necessary integral part of the metering function carried on within it.”

As pointed out by Talisman, this finding is consistent with the purpose of standardized linear rates. A central intent of that scheme is to simplify the assessment process, and eliminate the necessity for comprehensive individual well site assessments. Distinguishing between meter runs and the boxes that house them tends to complicate the assessment process rather than simplify it, and frustrates the overall purpose of the standardized rates.

Sub-issue (c): Are the meter boxes intended or used for any of the purposes described under section 284(1)(k)(iii)(C) of the Act?

As indicated above, the purposes described under 284(1)(k)(iii) (C) include

“(I) obtaining oil or gas or both, or any other mineral and ...  
(IV) monitoring or observing performance of a pool, aquifer, or an oil sands deposit”

The MGB accepts the testimony of Mr. Belanger that the meter at each well measures gas production from the part of the resource pool tapped by that well; this data helps Talisman determine whether to reduce flow to preserve aquifer pressure and avoid drawing water. The MGB is satisfied that such metering activity amounts to monitoring or observing the performance of a pool within the meaning of the Act. Since meter box enclosures and the meter runs within them are to be considered as integrated units, it follows that at least one purpose of the meter boxes is to monitor or observe a pool.

Having found that Talisman’s meter boxes serve a purpose listed under s. 284(1)(k)(iii)(C)(IV) – i.e. observing or monitoring performance of a pool - it is unnecessary to consider whether they also serve any of the other purposes listed under subsection (C).



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Sub issue (d): Are the meter boxes used for the protection of well head installations?

The photographs presented in evidence and the testimony of Mr. Belanger and Ms. Bielecki showed that none of the meter boxes cover well heads. In fact, the meter boxes are all at least 25 feet away from the well heads due to safety regulations. The MGB concurs with its earlier observation in *Amoco Canada Petroleum Company Ltd. v Municipal District of Bonnyville No. 87* (Board Order MGB 192/99), where it noted

“that “protection” is for the well head installations rather than both the well head installation and other improvements [at the well site].”

While the evidence suggests that meter boxes do house controls for well head shut off valves, the MGB finds this connection insufficient to ground a conclusion that they are “used for the protection of well head installations”. Therefore, the MGB finds the meter boxes in question were not “used for the protection of well head installations”.

Sub issue (e): Are the meter boxes “buildings” within the meaning of s. 284(1)(k)(iii)(G) of the Act?

In view of the above findings, it is necessary to determine whether section 284(1)(k)(iii)(G) excludes Talisman’s meter boxes from the definition of “pipelines” by virtue of their being “land or buildings”.

“Buildings” is not a defined term under the Act; therefore, some interpretation is required. The MGB notes that “buildings” are mentioned under subsection (G) along with “land”; this fact suggests that real rather than personal property is intended. Given that the meter boxes in question are not affixed to the soil and can be trucked to other locations if necessary, it would appear that they are not real property and hence not “buildings”.

This interpretation is strengthened by the Act’s definition of “structure”, which encompasses not only “building”, but also any

“other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land.”

Contrasting “land or buildings” with the defined term “structure” reinforces the view that “land or buildings” excludes buildings in the sense of real property, or permanent structures affixed to the soil. Again, given that meter boxes are relatively temporary and not affixed to the soil, they fit more naturally into the “structure” category than into the narrower “building” category.

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Both sides introduced evidence about whether meter box costs were factored into the calculation of the standardized rates. If meter box costs were factored in, then it would seem the intent of the regulated regime was to include meter boxes in the definition of “pipelines”, and hence not to exclude them as “buildings”. However, if meter box costs were not included, then the reverse conclusion would seem justified.

Mr. Affolder suggested meter box costs were not included based on an early report generated by the Department. However, the report itself was never entered into evidence, and the MGB is uncertain as to its exact origin or authority; moreover, Mr. Affolder’s understanding of the report was brought into question on cross-examination. On the other hand, Mr. Jesse testified that meter box costs were factored into the standard pipeline rates. On balance, the MGB prefers the evidence of Mr. Jesse, who was involved with the inception of the regulated rate regime. However, the MGB notes that Mr. Jesse was unable to provide any specific information about the meter box costs, or explain why they are not listed in the Department report consulted by Mr. Affolder. Accordingly, only limited weight was given to this consideration.

The conclusion that meter boxes are not “buildings” as defined under the Act is consistent with the earlier MGB decision explained in Board Order MGB 011/02. That decision resolved ambiguity in the term “building” by considering various indices, including purpose, size, usage, and mode of erection and installation. Having considered these indices, the MGB concluded that the meter structure then under consideration was not a building. Except that it was raised on stilts, the meter box structure considered in MGB 011/02 is largely similar to the structures presently under appeal. Thus, the same indices of purpose, size, usage, mode of erection and installation support the view that the meter structures now in question are not buildings. In view of the above, the MGB is satisfied that the Talisman’s meter boxes are not “buildings” within the meaning of the Act.

Sub issue (f): Do the same considerations apply to the case where a separate enclosure houses special equipment required to boost the RTU’s?

The parties dedicated little evidence or argument to the single case in which a separate structure (“the RTU structure”) houses special equipment to boost the RTU signal. There was no dispute that the RTU enclosure is of the same general type as the other meter boxes. The significant difference is that the RTU structure houses only RTU equipment while the other meter boxes house both a meter run and an RTU unit.

Like the meter boxes, the RTU structure is clearly an improvement located at a well site. Similarly, it is not for the protection of well head installations, and would appear to be a “structure” as opposed to a “building” for similar reasons to those outlined in relation to the other meter box structures.

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It is less clear whether the RTU structure is used for the purpose of measuring or observing a pool. On the one hand, the RTU equipment is not directly involved in measuring the performance of a pool, since the meter performs this function. On the other hand, transmitting meter measurements via the RTU could be said to contribute to the remote observation of the pool's performance by Talisman's personnel. By extension, the protective structure for the RTU equipment would share the same purpose.

Based on the limited evidence before it, the similarity of the RTU structure to the other meter box structures, and the close functional connection between the RTU equipment and the remote observation of pool performance, the MGB is satisfied that the RTU structure serves the purpose of observing pool performance, and is included in the definition of "pipeline" in section 284(1)(k)(iii).

**Conclusion**

Having considered all of the evidence and arguments submitted by the parties, the MGB finds that the definition of "pipelines" in section 284(1)(k)(iii) captures all of the structures under appeal. Therefore, these structures do fall within the meaning of linear property as defined under the Act, and are not assessable by the municipal assessor.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 13<sup>th</sup> day of August 2004.

MUNICIPAL GOVERNMENT BOARD

(SGD.) S. Cook, Member

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**APPENDIX "A"**

APPEARANCES

<b>NAME</b>	<b>CAPACITY</b>
Gilbert J Ludwig	Solicitor for the Appellant
Danielle Bielecki	Witness for the Appellant
Martin Belanger	Witness for the Appellant
Bill Jesse	Witness for the Appellant
Sheila C. McNaughtan	Solicitor for the Respondent
Randy Affolder	Witness for the Respondent

**APPENDIX "B"**

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

<b>NO.</b>	<b>ITEM</b>
A-1	Submissions of the Appellants
A-2	Willsay Statements for D. Bielecki, B. Jesse, and M. Belanger
A-3	Photographs of well sites
R-4	Submission of the Respondents Re: BP Energy and Talisman Energy (supporting materials)
R-5	Submissions of MD of Greenview No. 16
R-6	Willsay statement of Randy Affolder
A-7	<u>Calgary Real Estate Board Co-operative v Alberta (Assessment Appeal Board) [1983] AJ 281 (Alta CA)</u>
A-8	Agricore Cooperative Ltd. Forestburg (Village) Board Order MGB 076/02
R-9	<i>Electric Power and Pipe Line Assessment Act</i> (Chapter E-5 RSA 1980) - section 1