BOARD ORDER: MGB 086/04

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 COMPLAINTS respecting Linear Property Assessments for the 2003 tax year filed on behalf of County of Athabasca No. 12, Strathcona County, Sturgeon County, County of Thorhild, Municipality of Wood Buffalo, Lakeland County, and City of Edmonton.

BETWEEN:

Corridor Pipeline Limited as represented by Wilson Laycraft - Complainant

- a n d -

The Designated Linear Assessor for the Province of Alberta as represented by Brownlee LLP - Respondent

BEFORE:

Members:

C. Bethune, Presiding Officer
L. Atkey, Member
A. Savage, Member

Secretariat:

M. d'Alquen
D. Woolsey

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on March 9 to 12, and March 15 to 16, 2004.

This is a complaint to the Municipal Government Board (MGB) with respect to linear property assessments entered in the assessment roll of the Respondent municipalities as follows.

Municipality	PPI-ID #	Property Type	Licence Number	Pipe Diameter (mm)	Assessed Value
County of Athabasca No. 12	748455	Pipeline	33527	584.6 - 635.0	29,966,320
Strathcona County	748455	Pipeline	33527	584.6 - 635.0	3,476,260
Sturgeon County	748455	Pipeline	33527	584.6 - 635.0	3,003,230
County of Thorhild	748455	Pipeline	33527	584.6 - 635.0	13,025,020
Regional Municipality of Wood Buffalo	748455	Pipeline	33527	584.6 - 635.0	43,838,410
Lakeland County	748455	Pipeline	33527	584.6 - 635.0	16,699,290
Total Assessed Value			**33527**		**110,008,530**

Municipality	PPI-ID #	Property Type	Licence Number	Pipe Diameter (mm)	Assessed Value
County of Athabasca No. 12	745305	Pipeline	33528	298.6 - 339.8	11,532,510
Strathcona County	745305	Pipeline	33528	298.6 - 339.8	1,329,220
Sturgeon County	745305	Pipeline	33528	298.6 - 339.8	1,143,550
County of Thorhild	745305	Pipeline	33528	298.6 - 339.8	5,051,010
Regional Municipality of Wood Buffalo	745305	Pipeline	33528	298.6 - 339.8	16,756,530
Lakeland County	745305	Pipeline	33528	298.6 - 339.8	6,384,450
Total Assessed Value			**33528**		**42,197,270**
City of Edmonton	748456	Pipeline	33529	482.6 – 533.5	1,014,710
Strathcona County	748456	Pipeline	33529	482.6 – 533.5	5,372,120
Sherwood Park – Urban Area	748456	Pipeline	33529	482.6 – 533.5	1,191,280
Total Assessed Value			**33529**		**7,578,110**
Sherwood Park – Urban Area	745306	Pipeline	33530	381.1 – 431.7	887,580
City of Edmonton	745306	Pipeline	33530	381.1 – 431.7	760,310
Strathcona County	745306	Pipeline	33530	381.1 – 431.7	4,009,120
Total Assessed Value			**33530**		**5,657,010**

PRELIMINARY MATTERS

The MGB heard submissions on two preliminary matters.

Preliminary Issue 1. The Willsay Statement of Mr. Matiko

The first preliminary matter related to the Willsay Statement of Mr. Matiko, which the Complainant filed as rebuttal evidence on February 27, 2004, a date set by Decision Letter 010/04.

Mr. Matiko is an Accredited Municipal Assessor of Alberta (AMAA) who is currently working as a Property Tax Representative.

Respondent's Position

The Respondent submitted that Mr. Matiko's "rebuttal" raised new issues that ought to have been disclosed with the original complaint. Moreover, it said the timing of this hearing (March 9, 2004) gave insufficient opportunity to respond to the new issues raised. The Respondent added that late introduction of evidence from the Complainant is contrary to the principles of fairness and natural justice, and cited an extensive body of case law and textbook excerpts in support.

Complainant's Position

The Complainant said that the willsay statement of Mr. Matiko was prepared as rebuttal to the reports of Mr. Driscoll and Mr. Moffatt which only became available when the Respondent filed its reply. The Complainant said it had asked to see these reports earlier, but was refused. Therefore, when the Respondent's reply became available, the Complainant needed the opportunity to respond.

Mr. Driscoll, AMAA, is Manager of Regulated Policy, Assessment Services Branch of Alberta Municipal Affairs. Mr. Moffatt, P.Eng., is currently working as an engineering and systems consultant.

Decision

The MGB reserved on this motion and indicated that it would hear any objection to the evidence in the course of the hearing should it arise.

Subsequently, the Respondent raised no challenges during the course of the hearing to evidence introduced by Mr. Matiko. The MGB is satisfied that the Respondent had sufficient opportunity to review the evidence of Mr. Matiko, and question him upon it, and that the principles of fairness and natural justice were observed.

Preliminary Issue 2. The Admission of the Complainant's "Technical Report"

The Respondent's second objection related to the Complainant's document entitled "Technical Report", which was offered as an exhibit at this hearing.

Respondent's Position

The Respondent objected that the Report is a combination of factual evidence and opinions without any indication of authorship; therefore, the Report presents evidence without offering an opportunity to test it by questioning. Upon inquiry, Mr. Saad indicated that he had written section 15 of the Report which relates to commissioning; similarly, Mr. Hill took responsibility for a Commissioning Schedule (included at tab K of the Report) and a Project Execution Plan (included at tab E of the Report). As for the remainder of the Report, the Respondent requested that it be excluded.

Mr. Saad, P.Eng., is Manager of Project Interface for Corridor Pipeline. Mr. Hill, P.Eng., is Regional Manager, Eastern Region Operations of Terasen Pipelines Inc.

Complainant's Position

In reply, the Complainant said that the entire report was a collaborative effort in which Mr. Saad and Mr. Hill had both participated, while Mr. Matiko had assembled non-engineering portions. Mr. Saad and Mr. Hill had reviewed all supporting material in the Report. In addition, the Complainant noted that the Respondent's own report signed by Mr. Moffatt contains many excerpts from websites and other sources for whom no particular author can be identified.

Decision

The MGB finds that the contents of the Report are relevant to varying degrees, and is prepared to allow it into evidence; however, for the reasons expressed by the Respondent, less weight is accorded those portions for which neither Mr. Saad nor Mr. Hill would take professional responsibility.

OVERVIEW

This complaint involves two main issues. The first is whether the Corridor Pipeline (Pipeline) was assessable for the 2002 assessment year under the *Municipal Government Act* (Act). Central to this issue is the interpretation of section 291(2)(a) of the Act. The Complainant argues that section 291(2)(a) exempts the Pipeline from assessment, because it was still under construction and incapable of being used for the transmission of oil as of October 31, 2002. The Respondent takes the opposite position: namely, the Pipeline was assessable because construction was completed and it was capable of being used for the transmission of oil on October 31, 2002.

The second issue is whether the Pipeline's assessed value for the 2002 assessment year should reflect additional depreciation. The Complainant argued in favour of additional depreciation, because the Pipeline was not proven worthy of use as of the date of assessment. This circumstance made the property less valuable and should have been reflected in the assessment. The Respondent argued against additional depreciation, because pipeline assessments are regulated by the Minister's Guidelines (Guidelines). These Guidelines allow only a fixed amount for depreciation and are not based on market value concepts.

BACKGROUND

The Pipeline and the Athabasca Oil Sands Project

The Complainant owns and operates the Corridor Pipeline, which runs for over 450 km through northern and central Alberta and is part of the Athabasca Oil Sands Project (Project). This Project is a joint venture between Shell Canada Limited, Chevron Canada Resources, and Western Oil Sands Inc. (Partners), who joined resources to build a system that can extract bitumen from deposits north of Fort McMurray, and distribute a refined synthetic crude oil product from terminals near Edmonton. The Partners, led by Shell Canada, wanted a company with pipeline expertise to build a pipeline linking the widely separated components of the Project. They chose the Complainant and reached an agreement whereby the Complainant (and its affiliated companies) would design and supervise pipeline construction. Once finished, the Complainant would also own and operate the pipeline to transport material for Shell and its Partners.

The two major components of the Project are the Muskeg River Mine (Mine), located 75 km north of Fort McMurray, and the Scotford Upgrader (Upgrader), located near Fort Saskatchewan.

The Mine processes oil sands to produce clean bitumen. Further refining occurs at the Upgrader, which produces a synthetic crude oil product and sends it to terminals in Sherwood Park, just east of Edmonton.

The Complainant built a set of four pipelines – collectively known as the Corridor Pipeline – to link the Mine, the Upgrader, and the Sherwood Park terminals. These four pipelines function as follows. The first pipeline (the "diluent pipeline") carries a hydrocarbon "diluent" from the Upgrader north to the Mine. The diluent is produced by the Scotford Refinery adjacent to the Upgrader, and is specially formulated to mix with bitumen, thus reducing its viscosity and allowing it to flow through a pipe. When the diluent reaches the Mine, it is mixed with bitumen and piped back to the Upgrader along a second pipeline (the "bitumen pipeline"). The Upgrader refines the mixture to produce synthetic crude oil, which flows down a third, much shorter pipeline (the "products pipeline") to marketing terminals in Sherwood Park. The fourth pipeline (the "feedstock pipeline") runs from the Sherwood Park terminals to the Upgrader, and carries condensate and blending materials required at the Upgrader.

The dimensions and capacities of the four pipelines are as follows. The diluent pipeline has a diameter of 12 inches and is roughly 450 km long. It is designed to transmit over 215,000 barrels per day. The bitumen pipeline is 24 inches in diameter and follows the same route as the diluent pipeline, but carries fluids in the opposite direction. It is designed to transmit over 65,000 barrels per day. The products pipeline is 20 inches in diameter, and roughly 40 km long. It is designed to carry over 125,000 barrels per day. Finally, the feedstock pipeline is 16 inches in diameter and follows the same route as the products pipeline, but carries fluids in the opposite direction. It can move over 40,000 barrels per day.

The Pipeline incorporates safety features, including anti-corrosive pipe coating and cathodic protection. In addition, flow can be stopped by closing valves called main line block valves, which are incorporated into the pipe. These valves close to isolate segments of the Pipeline in case of leaks or emergencies, and to facilitate repairs. They are located at strategic positions such as river crossings and pumping stations. The valves are controlled remotely from a central office and are operated by motors attached above-grade. Generators housed adjacent to the pipelines power the motors, but the valves can also be opened and closed manually.

In addition to the four pipelines, the Complainant owns and operates related facilities, including pumps, tanks and electronic monitoring systems. The pumps are housed in seven pumping stations adjacent to the pipelines. Five of these stations push fluid through the diluent and bitumen lines. The other two relate to the product and feedstock lines. In each pumping station, separate pumps are dedicated to individual lines, and fluid will not travel through the lines unless pushed along by the pumps. At either end of the diluent and bitumen pipelines are several high volume tanks that can store material before or after transmission.

Finally, the Pipeline is remotely monitored and operated through an electronic system consisting of remote telemetry units (RTUs), a Supervisory Control and Data Acquisition (SCADA)

system, and a related Leak Detection (LD) system. The SCADA and LD systems interface with RTUs attached to the pipelines to transmit data concerning product density, pipeline pressure and temperature, and valve and equipment status to a central monitoring and control centre.

Activities Undertaken To Construct The Corridor Pipeline

Work on the Corridor Pipeline followed steps considered standard in the pipeline industry. These steps involved:

- staking, grading and clearing the right of way;
- digging a trench for the pipes;
- "stringing out" segments of pipe and fittings along the right of way, and then welding them together to form "spreads" in the order of twenty kilometres in length;
- testing welds using X-rays or ultrasonic technology, and coating them with a protective coating to prevent corrosion;
- burying the pre-welded spreads of pipe in the trench;
- clearing the spreads of debris using discs, or "pigs" pushed through the pipe;
- pressure testing the spreads with pressurized water;
- welding the spreads together ("tying in") to form a continuous string of pipe from source to destination, and "cutting in" main line block valves;
- inspecting tie-in and main line block valve welds by radiography;
- line fill and commissioning; and
- land reclamation, and erosion prevention measures**.**

Timeline for the Project and the Corridor Pipeline

The Partners, Complainant and its affiliates undertook feasibility studies for the Athabasca Oil Sands Project in 1998 and 1999. In March of 1999, the Alberta Energy and Utilities Board (AEUB) held a public hearing; a decision followed in September 1999 approving the Pipeline with minor conditions. The Partners decided to proceed with the Project in December 1999, and detailed engineering for the project began shortly thereafter.

In January of 2000, the Complainant awarded contracts for services and materials relating to its part in the Project. Physical construction of the Pipeline began in August 2000, and continued at a rapid pace. The original plan was to have the Athabasca Oil Sands Project - including the Pipeline - operating by April of 2002. This target slipped despite the Complainant's best efforts owing to factors such as shortages of skilled labour. A 65 km section or "spread" was in place by October 2000, and a further 137 km by March 2001. The welding subcontractor (Midwest) welded and pressure tested the last portions of the diluent and bitumen lines in February 2002.

In July 2002 work began on the shorter pair of pipelines between the Upgrader and the terminals in Sherwood Park. Midwest finished welding and pressure testing these lines in August of 2002, with the final tie-in weld occurring on August 26, 2002.

Work on facilities related to the Pipeline progressed simultaneously with work on the Pipeline itself. The Upgrader began producing diluent by the beginning of 2002, and stored it in two large tanks. By May these two tanks were full. Therefore, diluent was introduced into the diluent line for storage purposes, and the whole of that line was filled successfully by May 16, 2002. Pumps at two pumping stations (the Muskeg River and Scotford North stations) were ready for this purpose. The rest of the diluent pumps were operable by August 2002, and all remaining pumps were ready by the first quarter of 2003.

The Upgrader and Mine were both ready for operation by the first quarter of 2003. Partial line fill began on the bitumen line in early January 2003. However, a fire at the Mine delayed further progress. Repairs were made, and complete line fill occurred for the bitumen pipeline by April 16, 2003. Line fill of the products line occurred shortly thereafter, and commissioning was declared complete April 23, 2003. The AEUB records showed all four lines as permitted until well after October 31, 2002.

ISSUES

1. Were the bitumen, diluent, feedstock, and products pipelines under construction but not complete as of October 31, 2002 in accordance with section 291(2)(a) of the Act?

    a) Do the records of a pipe at the AEUB indicate whether or not it was completed or under construction?
    b) What is meant by construction under section 291(2)(a)? In particular, are the activities of fabrication, installation, testing, and commissioning part of the definition of construction under the Act?
    c) What are the components of each of the four pipelines, and were they fabricated and installed as of October 31, 2002?
    d) Were pressure testing and commissioning completed for each of the four pipelines?

2. Were each of the four pipelines capable of being used for the transmission of oil on October 31, 2002?

    a) Does the AEUB record determine the status of a pipe and its capability to transmit oil?
    b) In what sense must a pipeline be "capable of transmitting" for the purposes of the Act?
    c) Does successful pressure testing alone indicate that a pipeline is capable of transmitting oil?
    d) If not, what other factors are relevant?

3. If the pipelines are assessable, do the legislation and regulations allow for additional depreciation to be applied, and if it can be applied, is additional depreciation warranted?

LEGISLATION

In deciding this matter the MGB examined the following legislative provisions.

Municipal Government Act

Section 284(1)(k) of the Act sets out the definition for linear property for the purposes of property assessment. In particular, section 284(1)(k)(iii) provides a definition of pipelines providing both general and specific examples of property included in this category and items which are not included.

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

(k) "linear property" means

(i) electric power systems, including structures, installations, materials, devices, fittings, apparatus, appliances and machinery and equipment, owned or operated by a person whose rates are controlled or set by the Public Utilities Board or by a municipality or under the Small Power Research and Development Act, but not including land or buildings,

(i.1) street lighting systems, including structures, installations, fittings and equipment used to supply light, but not including land or buildings,

(ii) telecommunications systems, including

(A) cables, amplifiers, antennas and drop lines, and

(B) structures, installations, materials, devices, fittings, apparatus, appliances and machinery and equipment,

intended for or used in the communication systems of cable distribution undertakings and telecommunication carriers that are owned or operated by a company as defined in Part 3 of the Telecommunications Act, SA 1988 cT-3.5, or that are subject to the regulatory authority of the Canadian Radio-television and Telecommunications Commission or any successor of the Commission, but not including

(C) cables, structures, amplifiers, antennas or drop lines installed in and owned by the owner of a building to which telecommunications services are being supplied, or

(D) land or buildings,

and

(iii) pipelines, including

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

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

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

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

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

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

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

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

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

(E.1) the legal interest in any land other than that referred to in paragraph (E) that forms the site of wells used for any of the purposes described in paragraph (C), if the municipality in which the land is located has prepared assessments in accordance with this Part that are to be used for the purpose of taxation in 1996 or a subsequent year,

but not including

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

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

(II) a regulating or metering station,

or

(G) land or buildings;

Section 291 of the Act sets out the rules for assessing improvements. Of particular interest is section 291(2)(a), which holds that no assessment should be prepared for linear property that is still under construction at the relevant date unless it is capable of being used for the transmission of gas, oil or electricity. The interpretation of this section is at the centre of this complaint.

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

(2) No assessment is to be prepared

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

Section 292 of the Act identifies the requirements for the preparation of linear property assessments. Each assessment must be done in accordance with the standards set out in the regulations and by October 31 of the year prior to the year in which a tax is imposed.

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 of the Act establishes the duties of an assessor when preparing an assessment. It stipulates that the appropriate rules and regulations must be followed; where no such regulations exist, the assessor must prepare an assessment in consideration of the assessments of similar properties in the municipality.

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

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

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

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

(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 488(1)(a) of the Act sets out the MGB's jurisdiction to hear complaints for linear property. A complaint filed for linear property goes directly to the MGB; it does not follow the two-tiered process applicable to general assessment appeals.

488(1) The Board has jurisdiction

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

....

Section 492 of the Act describes the types of complaints for linear property that may be brought to the MGB for determination.

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

(a) the description of any linear property;

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

(c) an assessment;

(d) the type of improvement;

(e) school support;

(f) whether the linear property is assessable;

(g) whether the linear property is exempt from taxation under Part 10.

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

(a) an assessed person;

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

Section 499 of the Act gives the MGB the authority to render a decision after a hearing has been completed; it also further defines the parameters of that authority.

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

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

(2) The Board must not alter

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

In order to decide the issue related to additional depreciation the MGB referred to the following relevant regulations**.**

The Minister may make Regulations regarding the preparation of Assessments.

322 The Minister may make regulations
(d) establishing valuation standards for property;
(e) respecting procedures for preparing or adopting assessments;
(g) prescribing standards to be met by assessors in the preparation of assessments;

Alberta Regulation 289/99 - Matters Relating to Assessment and Taxation

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.

2002 Alberta Linear Property Assessment Manual (Appendix II of 2002 Alberta Regulated Policy, Legislation, Regulation, Minister's Guidelines, Manuals)

3.000 SCHEDULE C–DEPRECIATION

The depreciation factors prescribed in Schedule C for linear property that is described in Schedule C are exhaustive.

No additional depreciation can be applied except as specified in Schedule D.

3.004 PIPELINE DEPRECIATION FACTORS

The depreciation factor for pipeline is 0.75.

4.000 SCHEDULE D-ADDITIONAL DEPRECIATION

The additional depreciation for linear property described in Schedule C, as specified in Schedule D, is exhaustive. No additional depreciation is to be given by the assessors.

4.003 PIPELINE (PL)

4.03.100 Pipe

Additional depreciation of pipe shall be determined using the table below. Depreciation factors in this table are not cumulative. If more than one depreciation factor from this table is applicable the assessor shall only apply the lowest factor (factor that allows the greatest amount of depreciation).

Code	Description	Depreciation Factor
A1	Pipe having a diameter greater than 246.2 mm and contained within the boundaries of Canadian Forces Base Suffield	**0.95**
B	Pipe constructed prior to 1940*	**0.50**
D	Discontinued	**0.10**
W	Pipe that has • a "From" facility code of WE **and** • a "From" legal location description with the same LSD, Section, Township, Range and Meridian that contains a non-producing well as defined in the 2002 Linear Property Assessment Manual **	**0.10**

Note: Status declared by each company. *
Does not include wells with an "Abandoned" status at the AEUB. **

With respect to the definition of construction and the determination of capability, the MGB also referred to the following sections of the *Pipeline Regulation*.

The *Pipeline Regulation* (Alberta Regulation 122/87) has authority under the *Pipeline Act* (RSA 2000 Chapter P 15). Section 6 of the *Pipeline Regulation* says that the minimum requirements specified in "CSA Z662 Oil and Gas Pipeline Systems" apply where consistent with the Regulation.

6(1) Reference in this Regulation to a CSA standard is to the latest published edition of the standard issued by the Canadian Standards Association, and includes any published addendum.

(2) The minimum requirements for the design, construction, testing, operation, maintenance and repair of pipelines shall be in accordance with CSA Z662 Oil and Gas Pipeline Systems, insofar as it is not inconsistent with this Regulation.

(3) The minimum requirements for leak detection procedures on liquid pipelines other than multi-phase or oilfield water pipelines shall be in accordance with Appendix E of CSA Z662 Standard, insofar as it is not inconsistent with this Regulation.

(4) Notwithstanding subsection (2), if an applicant proposes to use materials or components manufactured to standards not listed in the CSA Standard, the applicant shall provide sufficient documentation to enable the Board to determine their acceptability for the intended purpose and, if the Board is satisfied, it may allow the use of those materials or components.

Section 28 of the *Pipeline Regulation* specifies when a pipeline may be placed into operation.

28 A pipeline may be placed into operation when

(a) a satisfactory pressure test has been completed and fully documented,

(b) the pipeline test pressure has been reduced to at least the proposed maximum operating pressure and, if necessary, purged, and

(c) all tie-ins have been completed and inspected.

Canadian Standards Association (CSA) Z662 is referred to by the Pipeline Regulation and contains a definition of "construction".

CSA Manual Z662-96 section 3.1

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

CSA Manual Z662-03 section 3

Construction – all activities required for the field fabrication, installation, pressure testing, and commissioning of piping.

SUMMARY OF COMPLAINANT'S POSITION

The Complainant argued that the Corridor Pipeline was

1. under construction and not complete as of October 31, 2002, and
2. not capable of use for the transmission of oil as of October 31, 2002.

Therefore, the circumstances exempting linear properties from assessment applied, and the Pipeline was not assessable for the 2003 tax year.

The Complainant suggested the MGB should interpret the legislation with the close relationship between pipeline and pipeline system in mind. It said on a purposive approach, incomplete or non functioning parts of the pipeline system (such as pumping stations or the Mine) affect the status of the pipeline itself. However, it added that even without considering elements of the pipeline system, the evidence before the MGB shows that the Corridor Pipeline was incomplete and incapable of use.

In the alternative, the Complainant argued that if an assessment was required under the Act, then additional depreciation ought to have been allowed for the bitumen, product, and feedstock lines; additional depreciation was necessary to reflect reduced market value due to these pipelines never having been proven through use.

Issue 1. Under Construction And Not Complete

Elements of the Pipeline Still Under Construction

The Complainant admitted that field fabrication of the Corridor Pipeline was substantially complete as October 31, 2002. However, it argued that mere field fabrication does not constitute completion of a pipeline; moreover, the legislative test in the MGA is not "substantially completed" but "completed". Several important construction activities remained to be undertaken before the Pipeline could be called complete, as shown by the following evidence.

First, Corridor's records indicate that money budgeted for construction remained outstanding as of October 31, 2002, and that construction activity continued thereafter. These records include:

- a Project Management Report dated November 2002 showing that over 7 million dollars of the 300 million dollar pipeline construction budget remained outstanding;
- copies of invoices from EPCM contractors for construction work done after October 31;

- progress reports showing work done after October 31 by individuals identified by Mr. Saad as workers involved with construction activities.

Second, Mr. Saad and Mr. Hill indicated that several vital items concerning the Pipeline remained incomplete or outstanding as of October 31, 2002. Mr. Saad held the position of Manager, Project Interface with the Complainant during construction of the Pipeline, while Mr. Hill was Manager of Facilities. As senior engineers concerned with the progress of the Pipeline, Mr. Saad and Mr. Hill were in a position to know of its status of completion on October 31, 2002. Together, they testified that incomplete items included:

- the Mine;
- the Upgrader;
- a majority of the pump stations;
- elements of the Supervisory Control and Data Acquisition System;
- elements of the Leak Detection System;
- power systems to operate the main line block valves;
- bypass piping; and
- a densitometer on the Products Line (used to measure the density of liquid in the line, thus distinguishing between batches of product)**.**

Mr. Saad and Mr. Hill also testified that outstanding activities included:

- line fill on the bitumen, produce and feedstocks lines;
- backfilling and reclamation activities required for soil stability;
- formulation of an emergency response plan;
- analysis of potential problems such as metal strain at bends and pinholes in the pipe's coating; and
- monitoring and calibration of all four lines under operating conditions.

The Complainant emphasized that these are important details, and are - in the professional opinion given by Mr. Saad - essential for the completion and proper operation of the Pipeline.

Commissioning of the Pipeline Was Not Complete on October 31, 2002 (

The Complainant also submitted that Pipeline commissioning was not complete as of October 31, 2002. It described commissioning by reference to the definition adopted on page 48 of Board Order MGB 106/02MGB, Alliance Pipeline Limited vs. Alberta Municipal Affairs, with which Mr. Saad testified that he was in general agreement. That definition of commissioning reads as follows:

> "… a transitional process that marks the change from construction to operation and ensures that equipment is providing power, communication, gas compression, transmission, and monitoring is working efficiently, effectively, and safely."

Several pieces of evidence show that commissioning as defined above was incomplete as of October 31, 2003. For example, a Commissioning Schedule prepared by Mr. Hill shows that as of October 10, 2002, performance testing on the diluent line was not projected for completion until November, and that the bitumen, feedstock and products lines would not be filled until December, 2002, February 2003, and March 2003 respectively. Mr. Saad also testified that until the lines were tested with product, he could not be sure that flaws in the main line block valves or other pipeline components would not arise. Mr. Hill, the engineer in charge of commissioning, supported this evidence with testimony that he had been unwilling to certify pipeline commissioning complete until the lines had been filled.

Other evidence that transition to complete or operational status had not yet occurred as of October 31, 2002 includes:

- a copy of the notice of the commissioning date from the Complainant to Shell showing the official commissioning date as April 23, 2003;
- a news release dated June 9, 2003 announcing the Oil Sands Project to be fully operational;
- a copy of an independent engineer's report to financers showing the date that the Project was complete and that Shell Canada had certified service was not until June 2, 2003;
- a Briefing Note prepared by the Complainant dated May 26, 2003 indicating expiration of the Pipeline's construction insurance on April 23, and recommending endorsement of an operating insurance program; and
- a cash flow report prepared by the Complainant dated November 13, 2002 indicating project completion of only 88.9% as of October 31, 2002, and forecasting additional spending in the future.

All this evidence shows that the process of transition to operation was not nearly complete as of October 31, 2002. Likewise commissioning, which is a transitional process from construction to operation, could not have been complete.

The Complainant also emphasized evidence from Mr. Saad and Mr. Hill that line-fill and subsequent testing on the bitumen, products and feedstock lines did not occur until after October 31, 2002. Thus, there had been no opportunity to verify the integrity of tie-in welds and welds joining main line block valves by means of product flow. Mr. Hill, who was the engineer in charge of commissioning, was not prepared to certify commissioning complete until the lines were filled. With respect to the diluent line, the Complainant argued that although line fill had occurred, only about 40,000 cubic meters of diluent had actually flowed north to the Mine as of October 31, 2002 because the Mine was not yet capable of using it. Thus, there had been very little opportunity to test even the diluent line under operating conditions to ensure safe and

efficient operation. In short, commissioning, as a transitional process towards operation, was incomplete for all four pipelines.

Commissioning is a Part of Construction

Having submitted that commissioning was incomplete, the Complainant went on to argue that "construction" includes commissioning for the purposes of the Act. Therefore, construction could not have been complete as of October 31, 2002.

In support of this argument, the Complainant pointed to the definition of "construction" in the 1999/2003 Canadian Standards Association (CSA) Manual Z662 relating to oil and gas pipeline systems. This definition clearly includes commissioning as part of construction and reads as follows.

> "Construction - all activities required for the field fabrication, installation, pressure testing, and commissioning of piping."

Mr. Saad testified that the CSA Manual Z662 - including its definition of "construction" - is authoritative for pipeline engineering purposes. In addition, Board Order **(BO)** MGB 106/02, recognized the CSA definition of construction "as a viable standard" for determining whether the subject line was "under construction". Board Order MGB 106/02 is a well reasoned, precedent setting case "on all fours" with the current complaint. Thus, the reasoning adopted there applies equally well to the Corridor Pipeline. Finally, the Complainant submitted that section 6(2) of the *Pipeline Regulation* gives the CSA extra weight by adopting the provisions of Z662 where they are not inconsistent with the Regulation.

> "The minimum requirements for the design, construction, testing, operation, maintenance and repair of pipelines shall be in accordance with CSA Z662 Oil and Gas Pipeline Systems, insofar as it is not inconsistent with this Regulation."

In reply to the Respondent's objection that principles of statutory interpretation advocate using the plain meaning of words, the Complainant submitted that "construction" means not only "building" or "installing", but also connotes the broader sense of "doing what needs to be done so the pipeline can be properly run for its intended purpose". Moreover, it said this broader common sense meaning is widely accepted by professionals such as bankers and insurers, as shown by the independent engineer's report and Briefing Note mentioned above. The CSA description of "construction" is consistent with this broader common meaning of construction, and was adopted by the committee of engineers who put CSA Z662 together; thus, it cannot be dismissed as an ill-considered technical or "one-off" definition.

Finally, the Complainant suggested that the broad meaning of construction is consistent with the kind of purposive approach to interpretation the MGB should adopt. The Complainant relied on the MGB's decision in Board Order MGB 106/02 and Mahoney, J.'s review of that decision to

support its submission that one purpose of the provision is to exempt pipeline owners from taxation until their pipelines are complete, and they have had an opportunity to use them for their intended purpose. Since a pipeline cannot be used until after it is commissioned, construction should be interpreted as inclusive of commissioning.

Regulatory Requirements

Section 28 of the *Pipeline Regulation* allows a licensee to put a pipeline into operation once pressure testing is complete. However, the Complainant resisted the argument that this fact implies a pipeline is complete after pressure testing. Engineers have a professional obligation to ensure that the projects for which they are responsible are safe. While section 28 of the *Pipeline Regulation* permits operation after pressure testing, it does not relieve the engineers in charge of their professional responsibility to ensure that the pipeline in question is safe before it is used to transmit oil. Moreover, section 6 of the Pipeline Regulation incorporates the minimum requirements of the CSA code, which envisages commissioning as a necessary step of pipeline construction.

Section 292(2)(b)(i) of the Act also supports the argument that pressure testing does not render the pipeline complete. That section says assessments must reflect the specifications and characteristics of the linear property, as reflected in the AEUB's records. Pressure testing and radiographic testing of tie-in welds do not change a pipeline's status from "permitted". Thus, as of October 31, the Corridor Pipeline had the same AEUB "permitted" designation it held before pressure testing occurred. The fact that the AEUB records still showed the Corridor Pipeline as permitted on October 31, 2002 supports the conclusion that they were not yet complete or capable of being used.

Issue 2. The Pipeline Was Not Capable of Transmitting Oil

A Practical and Purposive Interpretation of "Capable of Being Used for the Transmission of Oil"

As with "construction", "capable of being used for the transmission of oil" is not defined in the Act, and the Board should adopt a practical and purposive interpretation. According to the Complainant (on page 9 of its Brief).

> "The practical approach requires a consideration of what the persons most knowledgeable with a project would consider in determining capability, what contractual provisions parties imposed on each other, what insurance provisions were in place, what provisions the parties make for performance testing."

The person who is most knowledgeable about the capability of a line to transmit oil is the engineer in charge of commissioning. In the case of Corridor, that person was Mr. Hill. He testified that he was not prepared to certify capability until mid-April, 2003, when the lines had been filled and proven their ability to transmit. In addition, insurance and financing agreements

suggest that other interested parties such as financers and insurers required more than pressure testing to prove ability to transmit oil.

The above considerations support the view that ability to be used to transmit oil implies the ability to transmit oil effectively and reliably. In addition, there must be a degree of certainty that the lines have been tested properly with product, and determined to be capable by responsible parties. Dictionary definitions of "use" and "capable" reinforce this interpretation. For example, Black's definition of "use" says that use of a thing means that one is to, "enjoy, hold, occupy, or have some manner of benefit thereof …". Similarly, the Concise Oxford Dictionary says "use" means to "cause to act or serve for a purpose …"**.** The Concise Oxford Dictionary also defines "capable" as "having the ability, fitness, or necessary quality for". The Complainant stressed that these plain definitions all imply fitness for a purpose. The purpose of a pipeline is transmitting oil or gas in a practical, efficient, and economic manner. Thus, "capable of being used" requires a functional utility on a consistent basis. Moreover, such use only happens after proper testing with product flow, which in the case of the Corridor Pipeline, did not occur until well after October 31, 2002.

The Pipeline System

A purposive approach must have regard to the system within which the Pipeline functions. In support of this submission, the Complainant cited the MGB's decision in Board Order MGB 106/02 which says in its Reasons that a practical interpretation of "capable of being used for the transmission of oil" requires that there be a

> "… consideration of where that [oil] for the subject property is coming from, how that [oil] is travelling and where that [oil] is going to."

Thus, two vital elements of the system are the source and receptor points, without which a pipeline cannot transmit oil in any practical sense. In the case of the Corridor Pipeline, the source and receptor points were the Mine and the Upgrader, which were not ready until well after October 31, 2002. Hence, as of October 31, 2002 the lines were not capable of transmission.

Similar considerations apply to other facilities such as pumping stations. The Pipeline was designed and built in connection with these facilities, and cannot function without them. The Complainant pointed to the evidence of Mr. Hill, who testified that without operating pumps, liquid would sit in the lines without moving anywhere. He emphasized this point by noting that the elevation of the main portion of the Pipeline is much higher in the middle than at either end. Thus, without functioning pumps, liquid introduced at one end could not be transmitted through the pipes, even by force of gravity.

Purpose of Section 291(2)(a)

A purposive approach also requires consideration of the purpose and context of section 291(2)(a). This purpose can be gleaned from the general context of section 291 and 292. Section 291(1) specifies that unless certain exceptions apply, assessments must be prepared for improvements, whether or not they are complete or capable of being used for their intended purposes. Section 291(2) then lists the exceptions, thus creating "breaks" for various improvements that are not complete or capable of being used for their intended purposes. The purpose of these "breaks" is to ensure that owners are not subject to taxation before having a reasonable chance to earn income from operating their property. Subsections 291(2)(a), (b), and (c) thus create a class of exceptions with a common intent: to relieve certain properties from assessment if they are incomplete or inoperable.

To complete its interpretation of subsection (a), the Complainant addressed the proviso "unless it is capable of being used for the transmission of oil". It submitted that this proviso's intent is to stop linear property owners avoiding assessment by delaying completion. In other words, the intent of the legislation is to ensure linear property is assessed if it can serve its purpose on the relevant date, even if it is incomplete in some technical sense.

The MGB's finding on page 50 of Board Order MGB 106/02 supports this interpretation.

> "… the MGB considers the intent of section 291 (2)(a) to be in part to prevent the avoidance of assessment, but that a second and equally important intent of the section is to ensure that linear property owners are not taxed before they have a realizable potential of being able to use that property for its intended purpose.
>
> …
>
> The intent of this legislation was to recognize that there may be certain circumstances in which construction could be completed by the relevant date, but there is a conscious choice or happenstance situation which delays such completion, but the pipeline has functional capacity. Thus the legislation is designed to prevent the delay of construction for the purposes of avoiding taxation … ."

Based on its interpretation of the legislative intent of the provision, the Complainant concluded that the Pipeline was not assessable under the Act, because it was far from operational as of October 31, 2002. This was shown not only by deficiencies in the pipeline and its facilities, but also by the fact that none of the lines were fully used until April of 2003. Moreover, there was no evidence of intentional delay; on the contrary, every effort had been made to keep to an aggressive schedule of construction.

Commissioning Not Complete

Commissioning is a transitional process from construction to operation designed to ensure equipment is working efficiently, effectively, and safely. Thus, the very purpose of commissioning is to test whether a pipeline is capable of transmission. The fire at the Mine – which occurred during start-up – is dramatic proof that commissioning is necessary to prove functional capacity.

Line fill was not complete on the bitumen, products and feedstocks lines until well after October 31, 2002, and the diluent line was not operational until April of 2003. Thus, as of October 31, 2002, there had been insufficient opportunity to test the operating ability of the valves and tie-in welds on any of the lines with flowing oil. Since commissioning was not complete, the Pipeline could not have been capable of transmission on the relevant date.

3. Additional Depreciation

If the MGB finds that an assessment was warranted for the 2003 year, then that assessment ought to reflect additional depreciation due to the Pipeline's incomplete and non-operational status on October 31, 2002. In support of this argument, the Complainant noted property assessors must follow the procedures set out in the Act and regulations in a fair and equitable manner. If the regulations are silent, the assessment must be guided by assessments of similar properties. In addition, assessments must reflect the specifications and characteristics of property on October 31, as per the records of the AEUB or information provided by the operator.

The 2002 regulations are silent with respect to additional depreciation for pipelines such as the Corridor Pipeline. Schedule D of the Guidelines recognizes additional depreciation for aged and discontinued pipelines, as well as pipelines on military bases and from non-producing wells. However, it says nothing regarding additional depreciation for new pipelines that are not yet operational. Therefore, the linear assessor should have prepared the assessment in a fair and equitable manner, based on the assessment of similar properties and information from the AEUB records and the Complainant.

Past practice has been either to exempt similar properties from assessment, or assess them at a depreciated value. This practice is consistent with the fundamental principle that properties should not be taxed on their non-productive features, a proposition established by Dominion Bridge vs. Mississauga (Town) (1974), 3 O.R. (2nd) (also Re: British Columbia Forest Products Ltd. (1961) 36 WWR 145 (BCSC), and Sun Life Assurance Co. of Canada vs. the City of Montreal [1950] S.C.R. 220). The Complainant pointed to the testimony of Mr. Matiko, previously an assessor with the Respondent, that traditionally no assessments were prepared for non-operating pipelines. It also referred to the evidence of Mr. Kipp, an experienced and accredited real estate appraiser, that market value decreases when properties have not yet proven themselves viable through operation.

In view of past practice with similar non-operational properties and the silence of the Act with respect to additional depreciation, the Complainant submitted that an equitable assessment would reflect an additional deduction of 50% of the assessed value of the bitumen, product, and feedstocks lines.

Case Law

In addition to the orders and cases referred to above, the Complainant submitted cases to establish the following principles in support of its position.

The courts accord deference to the MGB and the standard of review is patent unreasonableness (Alberta (Minister of Municipal Affairs) vs. Telus Communications Inc. 2002 ABCA 199). The words of an act should 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 (Rizzo vs. Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27). The MGB's interpretation of legislative provisions in the Act must consider its underlying purpose, with no predetermined presumptions, and substance must prevail over form to the extent consistent with the wording of the Act. (Quebec (Communauté urbaine) vs. Corp. Notre-Dame de Bon-Secours, [1994] 3 S.C.R. 3). Performance testing can be interpreted as construction; as well, the status of other machinery with which the subject machine operates in an integrated fashion can affect the status of completion (Sherritt Gordon Ltd. vs. Dresser Canada Inc. [1996] A.J. No. 666 (AB CA)). Minor elements are essential to completion of construction if they are important to the operation of a system (Brunswick Construction vs. Fundy Ventilation Ltd. et al (1982), 136 DLR (3d) 455 (NBCA)). Evidence may be given in rebuttal to challenge the assessor's figures and need not be given in chief (Mersey Paper Co. Ltd. vs. County of Queens 18 DLR (2d) 19 (NSSC)). A gas plant could not be said to be completed until after the performance test is satisfactorily performed (Shell Canada Ltd. vs. Municipal District of Pincher Creek No. 9, 59 D.L.R. (3d) 262 (Alta CA)). The Word "capable" in a statutory definition is to be read "practically capable" (Petition of Kansas City Bridge Co, 19 F. Supp. 419 (District Court W.D. Missouri)). Additional depreciation may be awarded where warranted and the regulations are silent on the issue (AEC Oil & Gas vs. Alberta (Municipal Affairs, Linear Assessor) MGB, BO 168/01; Talisman Energy Inc. vs. Alberta (Municipal Affairs), BO MGB 129/99). Relevant evidence should be considered to ensure equitable assessment, rather than adhering strictly to rigid administrative policies (Kneehill County[5] vs. Alberta (Municipal Affairs, Linear Assessor), BO MGB 001/04).

SUMMARY OF RESPONDENT'S POSITION

The Respondent argued that the Minister's assessment of the Pipeline was correct under sections 291(1) and 292 of the Act. Section 291(2)(a) does not apply to exempt the Pipeline from assessment, because:

1. Pipeline construction was complete as of October 31, 2002; and

2. even if the Pipeline was *not* complete as of October 31, 2002, (which was not admitted, but expressly denied) the Pipeline was capable of being used for the transmission of oil on that date.

The event that marks completion of a Pipeline is not the same as the event that marks completion of a pipeline *system*. All four lines were pressure tested and welded as "continuous strings of pipe" between source and destination by August 26, 2002. The final weld of the entire Corridor Pipeline occurred on August 26, 2002 as photographed and commemorated on Midwest's website. Therefore, the Pipeline was complete on August 26, 2002 regardless of the status of other system elements such as the Mine, the Upgrader, and the pumping stations.

Furthermore, additional depreciation would be improper, because the Guidelines adopted under the Act and its Regulations allow only a fixed amount of depreciation; moreover, additional depreciation would involve a market value approach inconsistent with the regulated approach chosen by the legislature for assessing linear property.

Issue 1. The Pipeline Was Complete and Not Under Construction

The Act requires the MGB to determine whether the Complainant's Pipeline was complete as of October 31, 2002. If it was complete, then an assessment was justified.

The Pipeline as Defined Under the Act

To determine the Pipeline's status, the MGB must focus on the subject property as defined by the Act. The Act defines "pipelines" in section 284(1)(k)(iii), as including "any continuous string of pipe", with limited specified fittings. The definition explicitly excludes land, buildings, the inlet and outlet valves, and any installations, devices, or equipment between those valves in regulating or metering stations, and any processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facilities.

Thus, the Act's definition of "pipelines" reflects a crucial distinction between pipelines and pipeline systems. Pipeline *systems* contain linear property, land, machinery, equipment, and other improvements; in contrast, a *pipeline* is merely a "continuous string of pipe", excluding facilities and all but a limited range of appurtenances. When deciding whether or not the Pipeline was complete, the MGB must not consider facilities such as pumping stations or other elements of the pipeline *system*; rather, it must focus on whether there was a complete and continuous string of pipe from source to destination.

In support of this argument, the Respondent noted that section 184(1)(k) treats other forms of linear property differently than pipelines. The other three types of linear property

(telecommunications systems, street lighting systems, and electric power systems) are all described as "systems"; in contrast, the word "system" plays no part in the definition of "pipelines". The conspicuous lack of any reference to "system" in the definition of pipeline reinforces the view that the Board must distinguish between a pipeline system and a pipeline. In short, elements of the pipeline system are not relevant when determining a pipeline's state of completion.

Another important aspect of the Act's definition of pipeline emphasized by the Respondent is its inclusion of the phrase, "whether the string of pipe is used or not". This phrase suggests that a pipeline exists for assessment purposes whether or not it is used. Therefore, the fact that the Pipeline had not yet been used commercially as of October 31, 2002 is not a reason to find that the Pipeline was not complete on the relevant date.

AEUB Records

A supplementary argument submitted by the Respondent was that under section 292(2)(b)(i), the assessor is required to carry out assessments of linear property reflecting the specifications and characteristics of the property as contained in the records of the AEUB. The AEUB's records specify the length, starting and ending points of the linear property in question. Thus,

> "Once the sections of pipe have been welded together between the 'from location' and the 'to location' shown on the pipeline licence, then a continuous string of pipe exists and pipeline linear property exists." (page 4 of Respondent's Brief)

As of October 31, 2002, the Corridor Pipeline had been welded together into a continuous string of pipe reflecting the specifications in the AEUB's records; therefore, the linear assessor was right to assess it.

The Definition of Construction

The Respondent took issue with the Complainant's definition of "construction", and its reliance on CSA Z662. Although "construction" is not defined under the Act, the Board should not resort to outside definitions, because the word "construction" is not complex and its common meaning makes sense in the context of the Act. Accepted principles of statutory interpretation, as explained in "Driedger on the Construction of Statutes", support using the ordinary rules of language, logic and common sense, where these are sufficient.

The logical, plain and ordinary meaning of "construction" is "to build or install", and does not include commissioning. This common sense meaning is appropriate in the context of the Act; therefore, the technical definition from CSA Z662 is unnecessary and misleading. Interpreting "construction" as "to build or install" also accords well with its accepted meaning in engineering and assessment contexts. Mr. Moffatt, a professional engineer with extensive pipeline experience, testified that he uses the word "construction" in its plain and ordinary sense, and that

this is how the word is used customarily both by engineers and others. Mr. Moffatt also testified that the elements of pipeline construction include: surveying, clearing and preparing the right of way, digging a trench, stringing out pipe, welding the segments together, lowering the welded pipe into the trench, and filling in the earth. He specifically stated that commissioning is not a part of construction.

Similar evidence appears in Mr. Moffatt's technical report, submitted by the Respondent. This report, under section 5.2, describes "construction complete", as follows:

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

As further evidence that "to build or install" is an appropriate interpretation of "construction" in the context of linear assessment, the Respondent pointed to the evidence of Mr. Driscoll, Manager of Regulated Policy for the Assessment Services Branch of Alberta Municipal Affairs. In his Witness Report, Mr. Driscoll states:

> "In assessment the word construction has its ordinary meaning of building, erecting or installing."

Mr. Driscoll's Report and testimony specifically reject commissioning as part of "construction" in the context of linear assessment. Mr. Driscoll agreed with Mr. Moffatt that pipeline construction includes preparing the right of way, digging the trench, buying, coating and welding the pipe, inspecting welds, and backfilling the trench. He said these activities are reflected in the modified cost of construction for pipelines, which were used to calculate the regulated per kilometre rates for the 2003 taxation year. He added that other activities, including commissioning, were not included in the modified base cost of construction. In fact, commissioning is categorized in the Construction Cost Reporting Guide (CCRG) as a post construction activity; the CCRG was developed by Alberta Municipal Affairs in consultation with stakeholders and it formed part of the Guidelines in 2001. Thus, the Respondent submitted that from an assessment perspective, commissioning is not a part of construction.

As further proof that commissioning is not a part of construction in the ordinary sense of the term, the Respondent drew the MGB's attention to passages posted on the Complainant's website and the websites of its affiliated companies and contractors. Many of these passages describe commissioning as an activity separate from construction; in addition, other passages describe commissioning as an activity done to the Pipeline system rather than to the Pipeline. Thus, even the Complainant, its affiliates and contractors distinguish between construction on the one hand, and commissioning - which follows construction - on the other. Furthermore, their

websites suggest that commissioning is mainly an activity that pertains to pipeline systems rather than to pipelines, and is not an aspect of pipeline construction.

In view of the above, the Respondent submitted that commissioning is not a part of pipeline construction. Therefore, the Complainant's argument that commissioning was not complete as of October 31, 2002 is irrelevant. It cannot show that the Pipeline was incomplete on the relevant date, or bring it within the exemption created by section 292(2)(a).

Section 28 of the Pipeline Regulation

Provincial legislation governing pipeline construction allows a pipeline to be placed into operation after pressure testing. This legislation is administered and enforced by the AEUB, a body charged with ensuring public and environmental safety. If the AEUB allows a pipeline to be placed into operation after pressure testing and before commissioning, then construction must surely be complete. The Respondent emphasized that the AEUB imposes stringent requirements on pressure testing to ensure that equivalent or more rigorous conditions prevail than during operation. However, section 28 of the *Pipeline Regulation* requires nothing beyond successful pressure testing for pipeline operation. In particular, there is no requirement that the pipeline be tested with product or that it be tested in conjunction with related facilities. Moreover, section 6 of the Pipeline Regulation does not assist the Complainant, because although it incorporates the minimum requirements of the CSA Code, the Code does not contain a requirement for commissioning.

Point in Time

The legislated exemption from assessment is clearly limited to linear property that is incomplete as of October 31, 2002. Therefore, the MGB must not consider events that happened after this date to determine the Pipeline's state of construction for the purposes of assessment. In particular, the fire at the Mine – an event that occurred in January of 2003 – is irrelevant to the Pipeline's status on October 31, 2002.

In view of the above, the Respondent argued that once pressure testing is complete and the spreads are welded together, the "last spike" is in place, and the pipeline is both complete and ready for operation. Pressure testing and tie-in welds were done for all four lines of the Corridor Pipeline as of August 2002. Accordingly, the Pipeline had completed construction and was assessable as of October 31, 2002.

Issue 2. Capable of Being Used for the Transmission of Oil

Since the Pipeline was complete as of October 31, 2002 the MGB need not consider whether it was capable of being used for the transmission of oil. Nevertheless, should the MGB find that the Pipeline was *not* complete, then section 291(2)(a) would still not relieve it from assessment for the 2003 year, because it was capable of transmitting oil on the relevant date.

Pressure Testing and Quality Control

As already indicated, the AEUB allows a licensee to put a pipeline into operation after pressure testing; moreover, the AEUB is charged with ensuring safety and environmental protection, and would not allow operation of pipeline if it were unsafe or unfit to transmit. The Complainant had pressure tested and welded all four lines as of August 2002. Therefore, the Corridor Pipeline was capable of transmitting oil by October 31, 2002.

In addition to the pressure tests required by the AEUB, the Complainant undertook comprehensive quality control measures. Mr. Hill described these quality control measures to include:

- developing an inspection and test plan;
- creating a system to keep track of test records;
- executing tests including hydrostatic testing, radiography tests on welds, and soil compaction;
- ensuring that suppliers of materials had proper testing and inspection plans of their own;
- verifying that these measures were carried out; and
- inspecting construction as it progressed to make sure it was of high quality.

The extensive quality control program adopted by the Complainant made it highly unlikely that the finished pipeline would be incapable of use for the transmission of oil. Indeed, Mr. Hill testified that even before introducing product into the pipelines, he had a high degree of confidence in their ability to transmit it safely. This confidence was due to testing and quality control measures taken before October 31, 2002, and was subsequently justified by the absence of spills or mishaps during line-fill.

No Requirement for Actual Transmission Under Section 291(2)(a)

Section 291(2)(a) does not require actual transmission to negate relief from assessment; it only requires *capability* of use for the transmission of oil. The Complainant's focus on actual throughput to prove capability is misleading, because successful pressure and weld testing prove the ability to transmit. Subsequent transmission only provides further duplicating proof that a line previously had the capacity to transmit. All four lines of the Corridor Pipeline had passed both pressure testing and the Complainant's rigorous quality control measures as of August 26, 2002. Therefore, all four lines were capable of being used for the transmission of oil on October 31, 2002.

The Court of Queen's Bench review of Board Order MGB 106/02 supports the position that actual throughput is unnecessary to show ability to be used for transmission. Mahoney, J.'s decision is not a straightforward endorsement of MGB 106/02, but in fact refines and modifies some of the MGB's opinions. In particular, the capacity of the line to transmit oil must be viewed in light of the following passage:

> "… the legislation requires only that capacity of the line to carry out the function of transmitting gas be considered and there is no requirement of commissioning, or constant flow of gas through the line, or commercial capacity, or even actual use." (Alliance Pipeline Ltd. vs. Alberta (Minister of Municipal Affairs), 2004 ABQB 115, para 42)

This passage contradicts the conservative position adopted by the Complainant that actual transmission is required to show that the Pipeline is capable of being used for the transmission of oil. The Respondent reminded the MGB that it is not bound by its decision in Board Order MGB 106/02. As an administrative tribunal, it must be flexible in the face of new evidence and new arguments. Thus, the possibility that the MGB may have considered actual throughput a determining factor with respect to capability in Board Order MGB 106/02 should not unduly influence its current decision.

To sum up, the Respondent's position was that successful pressure testing plus rigorous quality control procedures during construction ensured that the Pipeline was capable of being used for the transmission of oil as of August 26, 2002. This capability was reflected in both the commissioning engineer's confidence that introducing oil would pose no significant problems, and the confidence exhibited by the AEUB, which allows a line to be put into operation after pressure testing. Insofar as the diluent pipeline was concerned, the Respondent submitted that capability had been proven beyond doubt by actual transmission of diluent from the Upgrader to the Mine in May of 2002.

Issue 3. Additional Depreciation

Depreciation is canvassed unambiguously in the Guidelines, which apply to the subject property. Schedule C of the Guidelines says:

> "The depreciation factors prescribed in Schedule C for linear property that is described in Schedule C are exhaustive.
>
> No additional depreciation can be applied except as specified in Schedule D."

Schedule D says:

> "The additional depreciation for Linear Property described in Schedule C, as specified in Schedule D, is exhaustive. No additional depreciation is to be given by the assessors."

The wording of these schedules declares unambiguously that the additional depreciation for linear property specified in Schedule D is exhaustive. Therefore, neither the assessor nor the MGB has jurisdiction to order additional depreciation.

The Respondent also pointed to the evidence of Mr. Driscoll, who said that to allow additional depreciation would not make sense in the regulated approach to assessment contemplated by the Act. The linear cost tables developed in the Guidelines do not use market value; rather, they adopt a regulated cost approach. The regulated cost approach uses standardized costs and fixed depreciation rates, and the assessor must follow a specific procedure to arrive at his or her assessment. This procedure already includes an allowance for depreciation; to allow further depreciation based on market value techniques would be inconsistent and absurd.

Given the clear wording of these provisions and the illogical consequences of mixing a market value approach with a regulated approach, the Respondent submitted that neither the linear assessor nor the MGB has authority to apply additional depreciation beyond that specified in Schedule D.

Case Law

In addition to the MGB Board Orders and case law referred to above, the Respondent submitted cases to establish the following principles in support of its position.

Administrative tribunals must decide each case according to its own merits and not make decisions based on precedent (Domtar Inc. vs. Quebec (Commission d'appel en matière de lésions professionnelles) [1993] 2 SCR 756 (SCC)). An administrative tribunal must not allow the principles enunciated in earlier cases to restrict its consideration of an application upon its merits (Re Hopedale Developments Ltd. vs. Town of Oakville, 47 D.L.R. (2d) 482 (Ont CA)). An administrative tribunal cannot be bound by its previous decisions into a rigid and inflexible system (Medicine Hat College vs. Alberta (Public Service Employee Relations Board), [1987] A.J. No. 529 (AB QB)). It is a reviewable error of law to ignore a relevant requirement of the governing legislation (Lougheed & Company vs. Calgary (City) 2003 ABCA 232). There is no discretion to apply additional depreciation in a regulated assessment context beyond that explicitly allowed in the Minister's Guidelines; this is consistent with equitable assessment. (Apache Canada Ltd., Burlington Resources Canada Ltd. and Star Oil & Gas Ltd. vs. The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, BO MGB 154/03; Atco Gas & Pipelines Ltd. et al vs. The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, BO MGB 159/03; Penn West Petroleum Ltd. vs. The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, BO MGB 151/03; Town of Canmore vs. Minister of Municipal Affairs, BO MGB 287/98; Town of Okotoks et al vs. Designated Linear Assessor, Alberta Municipal Affairs, BO MGB 089/02; Progress Energy Ltd. vs. The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, BO MGB 133/03.)

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 as follows.

A. Pipelines Under Construction But Not Complete

1. AEUB records alone cannot determine whether a pipeline is complete or still under construction.

2. Installation, fabrication, testing and commissioning were all aspects of construction for the Corridor Pipeline.

3. Commissioning for the Corridor Pipeline included wet commissioning, or line fill, as well as performance testing with product in the pipelines.

4. All four subject pipelines were still under construction and not complete as of October 31, 2002.

B. Pipelines Not Able to be Used for the Transmission of Product

5. AEUB records alone cannot determine whether a pipeline is able to be used for the transmission of product.

6. To be able to be used to transmit product, a pipeline must be able to transmit it legally and safely in quantities that are significant in relation to quantities that the pipeline is designed and intended to transmit.

7. Line fill for the Corridor Pipeline posed technical difficulties requiring the exercise of considerable care and engineering expertise. Line fill was necessary for each pipeline before it could be used safely for its intended purpose.

8. The supervisory control and data acquisition and leak detection systems on the Corridor Pipeline had to be functioning in order to use the Pipeline safely for its intended purpose.

9. None of the four subject pipelines were capable of transmitting oil safely in significant quantities on October 31, 2002.

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 complaint in respect to the assessment is allowed and the assessment is set at 0.

It is so ordered.

REASONS

Jurisdiction of the MGB and Classification of the Subject Property

Section 488(1)(a) of the Act gives the MGB jurisdiction over linear property complaints in Alberta. Further authority to decide complaints is granted under section 499.

The evidence before the MGB establishes that the Corridor Pipeline is composed of four continuous strings of pipe, thus bringing it within the definition of linear property set out in section 284(1)(k)(iii)(A). Accordingly, an assessment must be prepared under section 291(2) of the Act unless the property falls under the exception set out in 291(2)(a).

Issue 1. Were the bitumen, diluent, feedstock, and products pipelines under construction but not complete as of October 31, 2002 in accordance with section 291(2)(a) of the Act?

a) Do the records of a pipe at the AEUB indicate whether or not it was completed or under construction?

Section 292(2)(b)(i) of the Act requires assessments to reflect the records of the AEUB. These records contain the "from" and "to" locations of each pipeline, and an indication of whether a pipeline is "permitted" or "operational". A pipeline is "permitted" once permission is granted to build it. It becomes "operational" in one of two ways: first, the owner can report to the AEUB that its pipeline has been put into use; second, the AEUB automatically changes pipeline status to operational after a legislated period elapses (currently 12 months).

Given the fashion in which a pipeline gains "permitted" and "operational" status, the MGB is satisfied that an assessor cannot determine whether it is incomplete or unable to transmit oil on this basis alone. The MGB also finds that the "from" and "to" locations are of limited use, because they are entered into the records before the pipeline is built. Certainly, a continuous string of pipe must be welded between "from" and "to" locations before a pipeline can be called complete. However, other activities - such as testing, commissioning and so on – may also have to take place between these locations in order to complete construction.

The evidence shows that all four pipelines were "permitted" and welded as continuous strings of pipe between the "from" and "to" locations as of October 31, 2002. By itself, this evidence cannot determine whether the Corridor Pipeline was "under construction but not complete" for the purposes of section 291(2)(a).

b) What is meant by construction under section 291(2)(a)? In particular, are the activities of fabrication, installation, testing, and commissioning part of the definition of construction under the Act?

To fit within the exception under 291(2)(a), the property must be "under construction but not completed on or before October 31". As noted in Board Order MGB 106/02, the legislation contains no definition of "construction". Therefore, some level of interpretation is required. In the matter of Alliance Pipeline Limited vs. Alberta Municipal Affairs, Board Order MGB 106/02, the MGB found it should take a purposive approach to interpretation. This involved considering the type of property at issue and the intent of the legislation in regards to such property. The MGB finds this approach is both reasonable and consistent with the submissions of the Parties to this hearing. Therefore, a practical and purposive approach is adopted in this case.

The MGB agrees with the submissions of both Parties that the interpretation of "construction" as it pertains to the Act should accord with the principles of logic and common sense, and should be consistent with the ordinary meaning of the term. The Respondent suggested the ordinary meaning of "construction" is to "build or install"; this is indeed a common meaning of the word. However, the MGB agrees with the Complainant that "construction" can also be used in a broader plain language sense to cover activities undertaken to bring a project to a usable, or operable state. In view of the breadth of meaning that the word "construction" has in plain language and the absence of a definition in the Act itself, the MGB finds that further interpretation is required.

In Board Order MGB 106/02 the MGB considered the definition in the Canadian Standards Association's (CSA) Manual Z662-99 and found it captured the most important elements of construction. The CSA definition was again submitted by the Complainant at this hearing and it reads as follows:

> "Construction - all activities required for the field fabrication, installation, pressure testing, and commissioning of piping."

The Respondent argued that the CSA definition of "construction" is not valid in the context of linear property assessment, and should be confined to its own context within Z662. The MGB agrees that caution should be taken when importing definitions from other contexts. In addition, it notes the evidence submitted concerning changes in the CSA definition between 1996 and 1999. In contrast to the 1999 and 2003 definitions, the 1996 CSA definition of construction reads:

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

With these considerations in mind, the MGB agrees that overzealous application of the CSA definition, which may in any case shift from year to year, would be unwise. Nevertheless, the MGB finds that the two CSA definitions presented capture elements of the meaning of "construction" which deserve consideration. These elements are: fabrication, installation, testing, and commissioning. In the absence of a definition in the Act itself, the MGB finds that the elements of construction identified by the CSA definitions (fabrication, installation, testing and commissioning) provide a useful starting point for analyzing the issue of what is involved in pipeline construction.

Fabrication and Installation

In Board Order MGB 106/02 the MGB found on page 49 that (field) fabrication

> "… includes but is not limited to, the basic physical construction of the pipeline, in the sense of fitting together all the essential components of the pipeline, such as the continuous string of pipe, loops, bypasses, distribution regulators, remote telemetry units, valves, fittings, and improvements used for the protection of pipelines … ."

It also concluded that installation

> "… includes the physical placement of the line in its intended space and the physical placement and connection of its component parts."

There was no dispute that these activities are properly part of construction for the purposes of the Act.

Testing

The evidence of Mr. Moffatt suggests that testing, including pressure testing, is not a part of construction. Thus, he writes in his report:

> "At this point [after backfilling] construction of the pipeline itself is complete. Two other activities commonly follow the completion of construction of the pipeline string: pressure testing, and clean up and restoration of the right-of-way." (page 13 of Mr. Moffatt's Witness Report)

On the other hand, Respondent's counsel states in final argument:

> "There is no dispute amongst Mr. Moffatt or Mr. Hill about the stages of construction, or as Mr. Hill calls it, installation, because he can't use the word construction in this context. Right-of-way clearing, ditch digging, lay the pipe, weld the pipe, lower it into the trench, leave the test ends exposed, pressure test it,

> hydrostatically test it. Section 28 of the pipeline regs. Clean and dry it, tie-in the welds the back ends and backfill it. It's constructed." (Volume 6, page 961)

Thus, there appears to be no dispute between the parties that pressure testing is part of construction. In any event, because pressure testing precedes the final tie-in welds, which clearly are a part construction, the issue as to whether pressure testing is also part of construction for the purpose of section 291(2) is not of practical importance. More controversial testing occurs during performance testing, which is considered under the heading of commissioning below.

Commissioning

The parties disagreed as to whether commissioning is properly a part of construction. Based on its interpretation of construction as "to build or install", the Respondent argued that commissioning should not be included. On the other hand, the Complainant pointed to the CSA definition of construction, which includes both commissioning and testing. The position of both parties was backed by professional engineering witnesses and property assessors, who flatly disagreed as to whether commissioning is part of pipeline construction.

The MGB notes the Respondent's argument that commissioning is not a part of construction in the context of linear property assessment, because commissioning costs are not included in the modified cost of construction used to calculate the standard per kilometre rates in the Guidelines. However, the evidence in support of this argument was weakened by Mr. Driscoll's candid admission that commissioning costs may have been included in the rate calculation after all.

Having considered the arguments on both sides, the MGB prefers the interpretation of "construction" advocated by the Appellant. In addition to being consistent with plain language and a definition formally adopted in relation to pipeline construction through the CSA code, a liberal interpretation appears in line with the purpose of section 291 of the Act. In Board Order MGB 106/02 – upheld on judicial review by the Alberta Court of Queen's Bench – the MGB found that purpose of section 291 of the Act

> "… is in part to prevent the avoidance of assessment, but that a second and equally important intent of the section is to ensure that linear property owners are not taxed before they have realizable potential of being able to use that property for its intended purpose."

Thus, the "capable of being used" proviso in section 291(2)(a) prevents owners from avoiding tax due to minor unfinished construction activities, which render the pipeline incomplete but do not materially affect its ability to function according to design. This view of the purpose of the legislation tends to support a wider interpretation of "construction". A narrow group of construction activities (such as welding together a continuous string of pipe) will be essential for pipeline use. A broader group of construction activities (such as advanced performance testing)

will probably not. In short, the proviso of "capable of being used" prevents property owners from hiding behind "construction", broadly interpreted, in order to avoid assessment.

In view of these considerations, the MGB finds that construction should be interpreted broadly to include, among other things, testing and commissioning activities such as pressure testing, radiographic testing, wet commissioning, venting, and performance testing. The MGB notes that this finding is consistent with its earlier decision in Board Order MGB 106/02, where it found that the incomplete status of advanced commissioning activities rendered construction incomplete, even though the pipeline had already transmitted over thirteen billion cubic feet of gas to market.

c) What are the components of each of the four pipelines, and were they fabricated and installed as of October 31, 2002?

Components of the Pipelines

In order to know whether the assessed pipelines were fabricated and installed, it is important to be clear on exactly what components are included in the pipelines. Therefore, the definition of "pipelines" in section 284(1)(k)(iii) of the Act must be carefully considered. This definition specifically includes some items under subsection (A) and excludes others under subsection (F). Among items discussed at this hearing and specifically included by (A) are: by-pass piping, main line block valves, and RTUs. Therefore, these items are components of the assessed properties. Among items specifically excluded by (F) are "processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facilities". Therefore, the Mine, Upgrader, storage tanks, the Sherwood Park terminal, and all pumping stations are not components of the assessed property.

The word "including" in subsection (A) suggests that the list of included elements is not exhaustive; thus, the assessed property may include items that are not specifically listed in the definition. Some items discussed at this hearing were neither specifically included by (A) nor specifically excluded by (F). Densitometers, the SCADA system and the LD system fit into this category. On the basis of Mr. Saad's description of the function and close connection of the densitometer to the products line, the MGB finds that the densitometer he described is part of the products pipeline for the purposes of section 291. The SCADA and LD systems are electronic systems which process and transmit data concerning conditions along the pipeline from RTUs to a central monitoring office. While the RTUs are specifically listed as linear property, the computer software, monitors and other equipment at the central office are clearly not linear property.

Fabrication And Installation

In simple terms, the fabrication and installation of the Corridor Pipeline involved assembling and welding the pipe and relevant fittings for the four constituent pipelines, lowering them into the

prepared ground, and covering them up again. The evidence emphasized by the Respondent concerning the final weld on August 26, 2002 shows that fabrication and installation were substantially complete by that date. On the other hand, Mr. Hill indicated that completion of hydrostatic testing and the final weld by August 26th does not mean that all relevant appurtenances, such as bypass piping, were in place as of that date. The transcript (Volume 3, page 388 to 389) records his testimony concerning this issue.

> "That means to me that the -- the line of pipe is welded together; it's placed in the ditch; it's hydrostatically tested in segments; the tie-in welds are done -- made and it's backfilled. Perhaps not backfilled to the extent that it would eventually be, but essentially backfilled. It doesn't necessarily mean that, for example, on the diluent and bitumen -- on the -- not the diluent. The diluent at that point already had liquid in it. On the bitumen pipeline, we hadn't necessarily installed the main line, the by-pass piping of the main line block valves because they are not -- until you introduce fluid, they don't become necessary to -- for the pressure containing envelope until fluid is introduced."

The evidence of Mr. Saad supports the conclusion that several elements of the pipeline as defined in the Act were not completed as of October 31. For example, the transcript records his testimony as follows.

> "… if I look strictly at that definition, there was a densitometer that was not built that was part of the upgrader system. There is -- some of the by-pass piping was not put in place prior to October 31st. And the calibration and testing of various instrumentation that relates to both the leak detection system and the SCADA system was not complete prior to October 31st, 2002. I'm trying to think if -- the cathodic protection system, the basic hardware, was installed, but again, it wasn't energized or calibrated as well prior to October 31st, 2002." (Volume 5, page 741)

Taken as a whole, the evidence shows that although almost complete, installation of minor pipeline components - notably by-pass piping and a densitometer - remained to be installed on the bitumen, feedstock and products pipelines as of October 31, 2002. Accordingly, the MGB finds that these three lines were not completely installed as of October 31, 2002.

d) Were pressure testing and commissioning completed for each of the four pipelines?

Testing

The evidence of Mr. Saad, Mr. Hill, and Mr. Moffatt was that the main testing procedures (aside from performance testing) were pressure testing and radiographic testing of welds. There was no dispute that pressure testing and radiographic testing were accomplished as of October 31, 2002. Accordingly, testing was complete as of October 31, 2002 for all four lines.

Commissioning

The expert witnesses agreed that the primary activity involved in commissioning the Corridor Pipeline was introducing fluid into the pipe behind a pig, taking care to vent the gases pushed out in front. Mr. Moffatt, expert witness for the Respondent, indicates in his report that other less important activities may also form part of commissioning, such as "confirming that main line block valves can be opened and closed, and that instruments and control systems can communicate". Mr. Saad, for the Complainant, adds that commissioning also includes performance testing; he said performance testing for the Corridor Pipeline involved measurements taken after initial start up to ensure that flow rate capacity conformed to design requirements, and that all four pipelines were operating properly in conjunction with one another as an integrated unit.

The Complainant filled the bitumen, feedstock and products pipelines between early January 2003 and April 16, 2003; thus, this aspect of commissioning was still outstanding for the bitumen, feedstock, and products lines as of October 31, 2002. With respect to the diluent pipeline, line fill occurred on the 16th of May 2002 as indicated by the testimony of Mr. Hill.

> "Well, we completed our wet commissioning of the pipeline essentially on the 14th of May. The pipeline system wasn't completed until we had wet commissioned all the intermediate pump stations. Nominally that date is somewhere like the 30th of August or something like that. That's when we demonstrated we could pump fluid with our other pump stations as well. And we filled their tank to the top on the 19th of September. That is just to ready the -- them to be able to introduce diluent into their mine process." (Volume 3, page 413 – 414)

On the other hand, Mr. Saad testified that performance testing was not completed for any of the pipelines, including the diluent pipeline, until well after October 31, 2002.

> "The performance tests were conducted on each pipeline separately. The diluent pipeline, because it had been -- had completed its first fill operation earlier in 2002, we were able to perform an initial performance test in December of 2002. That test had some concerns with it; the performance of the pipeline did not live up exactly to the design parameters that were envisioned and there was some concern that there might be some cause of that that's related to freezing and winter conditions, so another test was conducted later on, I believe in the second quarter of 2003. The bitumen pipeline was not performance tested as well until the second quarter of 2003. I believe it was in May, but I'm not certain it was that date. And the others were later than that." (Volume 1, page 159 – 160)

As indicated earlier, the MGB accepts that the performance testing aspect of commissioning was a part of construction for the Corridor Pipeline. The MGB finds that performance testing was still outstanding for all four constituent lines as of October 31, 2002.

Conclusion concerning Issue 1: Were the pipelines under construction but not complete as of October 31, 2002?

The MGB finds that all of the four assessed pipelines were under construction and not complete as of October 31, 2002.

Firstly, with respect to the bitumen, products and feedstock lines, the evidence showed that installation of bypass piping was not yet complete, and that remote telemetry units, main line block valves, and cathodic protection components were either not functioning or not powered. In addition, line fill, or "wet commissioning" had not occurred. Thus, the MGB concludes that these three pipelines were under construction and not complete as of October 31, 2002.

While line fill occurred before October 31, 2002 on the diluent pipeline, performance testing – which is a part of construction – was still incomplete as of the relevant date. In addition, remote telemetry units, main line block valves, and cathodic protection were not functioning, not powered, or required further inspection or work. Thus, the MGB finds that while at a more advanced stage of construction than the other three pipelines, the diluent pipeline was also under construction and not complete as of October 31, 2002.

2. Were each of the four pipelines capable of being used for the transmission of oil (product) on October 31, 2002?

a) Does the AEUB record determine the status of a pipe and its ability to be used to transmit product?

As indicated earlier, the AEUB records contain the "from" and "to" locations of each pipeline, and an indication of whether a pipeline is "permitted" or "operational". For reasons similar to those under heading 1(a), the MGB is satisfied that the "Permitted" status of the pipelines at the AEUB alone does not determine whether they were capable of being used for the transmission of product; similarly, their "to" and "from" locations are also of little assistance.

b) In what sense must a pipeline be "capable of transmitting" for the purposes of the Act?

The purpose of section 292(1)(a) of the Act is to prevent avoidance of assessment by pipeline owners who have a realizable potential of using their property for its intended purpose. The MGB is satisfied that a pipeline cannot be used for its intended purpose unless it can transmit significant volumes of product legally and under safe conditions. In positive terms, if a pipeline is legally approved to transmit product and can do so safely in significant quantities, then it is "capable of being used for the transmission of oil" for the purposes of the Act.

c) Does successful pressure testing alone indicate that a pipeline is capable of transmitting product?

Pressure testing (and hence regulatory permission to operate under section 28 of the *Pipeline Regulation*) is an important consideration when determining whether a pipeline can be used to transmit. This conclusion is mirrored by the finding in Board Order MGB 106/02, which held that National Energy Board (NEB) approval is one indicator of capability. Having said this, successful pressure testing need not be the sole indicator of whether a pipeline is capable of being used for the transmission of product. If the evidence suggests that despite regulatory approval, a pipeline is unready or unsafe to transmit product on something approaching commercial quantities, then the pipeline cannot be considered capable of being used for the purposes of the Act.

d) If not, what other factors are relevant?

While each fact scenario must be considered on a case by case basis, the following factors are some possible additional indicators of a pipeline's ability to be used for transmitting product.

Wet Commissioning or Line Fill

Wet commissioning or line fill is a second possible indicator that a pipeline is capable of being used to transmit oil, or product. However, in the present case, the parties disagreed as to its importance. Mr. Moffatt, for the Respondent, testified that commissioning of the Corridor Pipeline was a relatively simple operation that really amounted to using the pipe for the transmission of oil. On the other hand, Mr. Saad and Mr. Hill emphasized that while easier than commissioning facilities, filling the Corridor Pipeline posed significant challenges that had to be overcome to ensure safe use.

The MGB prefers the evidence submitted by the Complainant. The engineers in charge of building and commissioning a pipeline are in the best position to say when it becomes safe to use. Moreover, the MGB was impressed by the testimony of Mr. Hill, whom it found to be particularly forthright. He candidly admitted that extensive quality control measures and successful pressure testing done before October 31, 2002 made him confident he would be able to fill the pipelines successfully, even before he had done so. On the other hand, he would not certify the pipelines were safe to use before line-fill was achieved. Thus, at page 316 of the transcript, he testified,

> "I don't think that the safety of a pipeline can be considered ensured until the pipeline has been filled with oil and demonstrated to operate with all of its protective devices functioning in the liquid medium." (Volume 2, page 316)

Having reviewed the evidence on both sides, the MGB finds that filling the Corridor Pipeline for the first time was a complex procedure that had to be accomplished successfully before the Pipeline could be used to transmit product as intended. Thus line fill, or wet commissioning, is one important indicator of whether the subject pipelines were "capable of being used for the transmission of oil".

Supervisory Control And Data Acquisition (SCADA) and Leak Detection (LD) Systems

The Respondent argued that since SCADA and LD are not part of the definition of pipelines, their status need not be considered. Furthermore, it noted the Complainant filled, wet commissioned, and transmitted diluent through the diluent line without SCADA, LD, or the ability to open and close main line block valves by remote control; therefore, it said these systems cannot be necessary for pipeline use.

The MGB disagrees with this argument. Large pipelines such as the Corridor Pipeline are intended to transmit large quantities of product safely and relatively free of interruption. It is this kind of use which section 291(2)(a) is intended to address. The MGB is satisfied that such use would be dangerous and impractical when safety and remote control systems, including SCADA and LD, are not operating properly. This conclusion is supported by Mr. Saad's explanation of the relevance of these systems to pipeline use, whose testimony in relation to such matters was as follows.

> "And SCADA -- and those cannot be underestimated. The pipeline is remotely operated. It does not require people to man the stations at all times. So a supervisory control and data acquisition systems is fundamental. As to all modern pipelines; it's not unique to this particular pipeline. So the control centre was being upgraded to accommodate the screens that were related to the Corridor pipeline system and the SCADA system was still being worked on for those dates as indicated.
>
> And the SCADA system has two components; there is the programming and the terminal -- the actual computers that are housed in the control centre and then there is instrumentations on the pipeline that provides data for the SCADA system. I'm not a SCADA expert, but I know the basic operation of a SCADA system, and the instrumentation has to operate properly and that has to be verified, collecting the right data, sending it, communicating with the consoles that are in the control centre so that they know what the pressure is, what the density is, what the temperature is of the pipeline and the status of different equipment; pumps are on or off, valves are closed or open, et cetera.
>
> [Leak Detection is] another component that's integral to all modern pipeline, the leak detection system. It's required by code to have a leak detention system on a pipeline in this case and it's required by the Alberta regulation to have a leak

> detention system. It again takes data -- and I'm not a leak detention expert, but I know the basic operation, and it does take data relating to pressure, temperature, viscosity and density of the products that are running in a pipeline at different stages in the pipeline, compares that to a theoretical model as to what it should be at that location and does a comparison and if it's matching within a certain tolerance, then the pipeline is operating acceptably. If it's not, there is potentially a leak at some location. And it's intended to -- the LD is intended to realize a malfunction much earlier than, say, somebody who would observe it." (Volume 1, page 169)

Given the above, the MGB is satisfied that a major pipeline such as the Corridor Pipeline is unusable for practical purposes before the supervisory control and data acquisition and leak detection systems are installed, powered and operable. While SCADA and LD are not included in the definition of "pipeline", this does not change the fact the Corridor Pipeline cannot be used to transmit oil in a practical sense without SCADA and LD. Moreover, the remote telemetry units and other appurtenances necessary for the protection of the pipeline – which are included in the definition of pipeline – cannot be used or tested without the SCADA and LD systems in place.

Pumps in Place and Operable

Similar considerations apply to the status of pumps necessary to push product through the lines. While pumps are not included in the definition of "pipeline", this does not change the fact a pipeline such as the Corridor Pipeline cannot be used to transmit fluid without them. Therefore, the MGB is satisfied that the status of pumping stations is a relevant consideration when determining a pipeline's ability to be used to transmit oil.

Actual Throughput

In Board Order MGB 106/02, the transmission of 1.3 billion cubic feet of gas was a determining factor related to the finding of capability of being used for transmission of gas. Clearly, actual transmission of such a large volume of product is an extremely persuasive indicator that a pipeline is capable of being used for its intended purpose. By the same token, transmission of only a small amount of product will be a less persuasive indicator. Simply, the facts must be examined on a case-by-case basis, and the MGB notes the facts currently before it are different than those in MGB 106/02.

The MGB is satisfied that actual throughput is not the exclusive factor to be considered. The Respondent is also correct to point out that "capable of being used for transmitting" implies only a potential to transmit. Thus, actual transmission of large volumes of product is not necessarily required to show that a pipeline is capable of being used for transmission. This finding is consistent with the MGB decision in Board Order MGB 106/02, and Mahoney, J.'s review of that decision.

Performance Testing

Like actual throughput of product, successful performance testing using product to test the pipeline would be a persuasive indicator that a pipeline is capable of transmitting product; at the same time, unfinished performance testing does not necessarily show that a pipeline cannot be used to transmit. Again, this conclusion is consistent with Board Order MGB 106/02.

Commissioning Sign Off

Where commissioning has been certified complete, a pipeline will be capable of transmitting product.

Conclusion concerning Issue 2: Were each of the four pipelines capable of being used for the transmission of oil on October 31, 2002

Bitumen, Feedstock and Product Pipelines

The main positive indicator for these three lines is that pressure testing was complete as of October 31, 2002. Negative indicators include: line fill and wet commissioning were outstanding, the SCADA and LD systems were not operating, main line block valves were not powered or able to be operated by remote control, no pumps were yet operable, and no throughput had been achieved. Without throughput, performance testing and commissioning sign off were also not possible.

On balance, the MGB is satisfied that the bitumen, feedstock and product pipelines were not capable of being used for the transmission of oil, or product, for the purposes of the Act on October 31, 2002.

Diluent Pipeline

The status of the diluent line is somewhat less clear. In addition to successful pressure testing, line fill had occurred, all pumps were operable, and about 40,000 cubic meters of diluent had been transmitted. On the other hand, while 40,000 cubic meters is a substantial amount of fluid, it is not significant when compared to the 215,000 barrels per day that the line is designed to transmit. This circumstance is in stark contrast to the situation in Board Order MGB 106/02, where over 13 billion cubic feet of gas had been transmitted. Other negative indicators are that the SCADA and LD systems were not operating, and main line block valves were not powered or able to be operated by remote control. In addition, performance testing and commissioning sign off were not yet done.

On balance, the MGB finds that the diluent line was also not capable of being used for the transmission of diluent on October 31, 2002. Without the SCADA and LD systems in operation,

the Complainant was not able to monitor or control the pipeline through devices such as remote telemetry units, main line block valves, and other equipment designed to provide safety and protection; thus, the line was not able to be used for its intended purpose of transmitting large volumes of diluent in a safe and relatively uninterrupted fashion.

3. If the pipelines are assessable, do the legislation and regulations allow for additional depreciation to be applied, and if it can be applied, is additional depreciation warranted?

Having found that none of the lines were complete or capable of use on October 31, 2002, the MGB need not decide the issue of depreciation. However, if the MGB were to rule on the depreciation issue, its reasoning would be as follows.

The MGB agrees with the Respondent that the wording of Appendix II - Alberta Linear Property Assessment Manual implies unambiguously that no additional depreciation would be available for the Pipeline if it were assessable. The MGB does not find that the Guidelines are silent on the matter of depreciation; rather they are very explicit.

i) Schedule C says that no additional depreciation can be applied except as specified in schedule D, and

ii) Schedule D indicates that the additional depreciation for Linear Property described in Schedule C as specified in Schedule D, is exhaustive.

The MGB has no jurisdiction to order that additional depreciation be deducted. At first sight this result appears harsh, since the owner would pay the same rate for an untested line as for a fully tested and functional revenue-generating asset. However, it is likely that no additional depreciation factor appears in Schedule D for new non-operating pipelines because the legislation does not contemplate assessment of such pipelines at all; in addition, if the pipe is capable of use, an immediate and fixed depreciation is applied. Be this as it may, the MGB accepts that the valuation standard for linear property and specifically pipe is regulated rates and not the valuation standard of market value.

Summary

<u>Exemption From Assessment Under Section 291(2)(a)</u>

The MGB found construction should be interpreted broadly to include fabrication, installation, testing, and commissioning. Further, none of the lines were complete as of October 31, 2002 because (i) several elements included in the Act's definition of "pipelines" remained to be installed, and (ii) commissioning was not yet complete on any of the lines.

The MGB also found that the pipelines were not able to be used for the transmission of product as of October 31, 2002. "Capable of being used for the transmission of oil" under the Act means capable of being used in the practical sense for which the pipelines were designed: namely, legal and safe transmission of fluid in quantities that are significant in relation to those which the pipelines are intended to transmit. Despite successful pressure testing, the circumstances were such that none of the pipelines under appeal were capable of being used for their intended purpose. These circumstances included lack of wet commissioning on three of the lines and the inoperable status of certain elements essential to safe transmission on the scale intended.

As stated in the reasons the MGB examined the legislation, and specifically section 292 (2) (a), in the context of the purpose of the section to prevent linear property owners from delaying assessment by delaying the in-service date, as well as ensuring that a pipeline owner is not assessed until it has an opportunity to use the property for its intended purpose. After examining the evidence presented, the MGB is satisfied that the Complainant did not attempt to avoid assessment by delaying completion. The MGB comes to this conclusion by examining the timing of the events related to the construction of the pipeline and the forthright manner in which the witnesses for the Complainant described these events.

In view of the above, the MGB finds that all four subject pipelines satisfy the conditions of section 291(2)(a), and are not assessable under the Act for the 2003 tax year.

Additional Depreciation

In view of the foregoing conclusion, the MGB found it unnecessary to decide whether additional depreciation was available because of the pipelines' new and unproven status. Nevertheless, given the provisions of the Act and Minister's Guidelines, the MGB is of the opinion that no additional depreciation would be available if the pipelines were found assessable.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 7th day of September 2004.

MUNICIPAL GOVERNMENT BOARD

(SGD.) L. Atkey, Member

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
G. Ludwig	Legal Counsel for the Complainant
Z. Saad	Witness for the Complainant
G. Hill	Witness for the Complainant
R. Matiko	Witness for the Complainant
W. Kipp	Witness for the Complainant
B. Sjølie	Legal Counsel for the Respondent
C. Zukiwski	Legal Counsel for the Respondent
M. Moffatt	Witness for the Respondent
D. Driscoll	Witness for the Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
C1	Technical Report on the Completion of the Corridor Pipeline Project
C2	Brief of the Appellant
C3	Rebuttal the Willsay/Cansay Statements of the Evidence of the Respondent
C3(a)	Rebuttal to the Respondent's Legal Argument
C3(b)	Rebuttal of Willsay/Cansay Statements of the Evidence of the Respondent
C4	Book of Complainant's Authorities
C5	Curriculum Vitae of Gregory Hill
C6	Curriculum Vitae of Wayne Kipp
C7	Curriculum Vitae of Robert Matiko
C8	Curriculum Vitae of Ziad Saad
C9	Summary of Willsay/Cansay Statements of the Evidence
C10	Reporting Letter from Wayne Kipp
C11	Overhead presentation printouts – Terasen Pipelines
R12	Respondent's Legal Argument

R13	Respondent's Volume of Authorities: Domtar Inc vs. Quebec (Commission d'appel en matière de lésions professionnelles) [1993] 2 SCR 756 (SCC), Re Hopedale Developments Ltd. vs. Town of Oakville, 47 D.L.R. (2d) 482 (Ont. CA), Medicine Hat College vs. Alberta (Public Service Employee Relations Board, [1987] A.J. No. 529 (AB QB), Apache Canada Ltd., Burlington Resources Canada Ltd. and Star Oil & Gas Ltd. vs. The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, BO MGB 154/03; Atco Gas & Pipelines Ltd. et al vs. The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, BO MGB 159/03; Penn West Petroleum Ltd. vs. The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, BO MGB 151/03; Town of Canmore vs. Minister of Municipal Affairs, BO MGB 287/98; Town of Okotoks et al vs. Designated Linear Assessor, Alberta Municipal Affairs, BO MGB 089/02; Progress Energy Ltd. vs. The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, BO MGB 133/03); Sullivan R., Driedger on the Construction of Statutes 3rd Edition (Toronto: Butterworths) Foreword to the 1st Ed. and pp. 553-565
R14	Witness Report: Status of the Corridor Pipeline as of October 31, 2002 (Moffatt)
R15	Witness Report: Corridor Pipeline Ltd. (Driscoll)
R15A	Untitled Spreadsheet in three columns, columns are titled "Property Type", "Linear Property", and "Non-Linear Property" – Corrected Tab 3 of R15
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R18	Respondent's Volume of Documents
R19	Respondent's Volume 1 of Legislation
R20	Respondent's Volume 2 of Legislation
R21	Alliance Pipeline Limited vs. Alberta (Minister of Municipal Affairs), 2004 ABQB 115
R22	Lougheed & Company vs. Calgary (City) [2003] AJ No. 945, 2003 ABCA 232
R23	Volume of Documents Previously Submitted at the Preliminary Hearing – January 19, 2004 and then marked R-1.

R24	Volume of Authorities Previously Submitted at the Preliminary Hearing – January 17, 2004
R25	Volume of Documents regarding information exchange, including: Letter from G. Ludwig concerning the Respondent's objection to rebuttal evidence (March 5, 2004), Letter from C. Zukiwski concerning an application to exclude Mr. Matiko's Willsay/Cansay Statement and the identification of Dr. Hartmann as a witness (March 4, 2004); Letter from C. Zukiwski concerning Decision Letter 010/04; MGB Decision Letter 010/04
R26	Materials in Support of the Respondent's Application regarding the Admissibility of Evidence from Dr. Hartmann, Evidence from Mr. Matiko, and the Document Entitled "Technical Report on the Completion of the Corridor Pipeline"
R27	Enlarged Chart of Requirements for Assessment of Linear and Non-Linear Property
R28	Enlarged Chart the Municipal Government Act Valuation Standard – section 322(d)
R29	Enlarged Map of Alberta showing the route of the Corridor Pipeline
R30	Enlarged Picture of the final weld on August 26, 2002 on the Corridor Pipeline
C31	Mersey Paper Co. Ltd. vs. County of Queens, 18 DLR (2d) 19, NSSC 1959

* R16 + R17	not included as exhibits and not considered by the MGB (documents related to a witness who did not appear)