

BOARD ORDER: MGB 089/02

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

AND IN THE MATTER OF A LINEAR PROPERTY COMPLAINT to the Alberta Municipal Government Board.

BETWEEN:

Town of Okotoks, Town of Pincher Creek and Alberta Urban Municipalities Association represented by Sheila C. McNaughtan of Reynolds, Mirth, Richards and Farmer - Complainants

- a n d -

Designated Linear Assessor, Alberta Municipal Affairs represented by Michele Annich of Sharek Reay - Respondent

- a n d -

Utilicorp Networks Canada represented by Gilbert J. Ludwig of Wilson Laycraft - Intervener

BEFORE:

C. Bethune, Presiding Officer

L. Atkey, Member

A. Knight, Member

D. Woolsey, Secretariat

A. Sjouwerman, Secretariat Support

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on January 29 and 30, 2002.

This is a complaint to the Municipal Government Board (MGB) with respect to linear property assessments for the 2001 tax year in the Towns of Okotoks and Pincher Creek. The Town of Okotoks filed the following complaint:

Municipality	PPI-ID number	Assessee
Town of Okotoks	756573	Utilicorp Networks Canada
Town of Okotoks	756574	Utilicorp Networks Canada

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Municipality	PPI-ID number	Assessee
Town of Okotoks	756576	Utilicorp Networks Canada
Town of Okotoks	756578	Utilicorp Networks Canada
Town of Okotoks	756579	Utilicorp Networks Canada
Town of Okotoks	756581	Utilicorp Networks Canada
Town of Okotoks	805470	Utilicorp Networks Canada

The Town of Pincher Creek filed the following complaint:

Municipality	PPI-ID number	Assessee
Town of Pincher Creek	756607	Utilicorp Networks Canada
Town of Pincher Creek	756608	Utilicorp Networks Canada
Town of Pincher Creek	756610	Utilicorp Networks Canada
Town of Pincher Creek	756612	Utilicorp Networks Canada
Town of Pincher Creek	756613	Utilicorp Networks Canada
Town of Pincher Creek	805475	Utilicorp Networks Canada

INTRODUCTION

Utilicorp Networks Canada operates the electric power system within the Towns of Okotoks and Pincher Creek. These electric power systems (ELE) were assessed by the Designated Linear Assessor according to regulated rates for the purpose of linear assessment and taxation for tax year 2001. The Towns of Okotoks and Pincher Creek filed complaints with the MGB on the grounds that the assessed value does not reflect the true market value of the electric power systems and, therefore, is not assessed fairly and equitable compared to other properties in the municipalities.

The MGB heard the argument and evidence related to the Town of Okotoks, followed by the arguments and evidence related to the Town of Pincher Creek. The parties to both complaints obliged the MGB by not repeating similar arguments that applied to each case. In the case of the Town of Pincher Creek, the Complainants added a few specific arguments that were different from the Okotoks case. For this order the Town of Okotoks, the Town of Pincher Creek and the Alberta Urban Municipalities Association are referred to as the Complainants. The Town of Okotoks will be referred to as Okotoks and the Town of Pincher Creek will be referred to as Pincher Creek. The Alberta Urban Municipalities Association will be referred to as AUMA.

The MGB is required to notify the parties affected by the complaint. In this case the party affected by both complaints is Utilicorp Networks Canada. In this order Utilicorp Networks Canada is referred to as the Intervener in this order and the Designated Linear Assessor is referred to as the Respondent.

The proceedings, decisions and reasons of the complaints filed by both municipalities are combined in this order.

PRELIMINARY MATTERS

The Intervener raised the issue of admissibility of a sale price of the electric utility. This sale price had been provided to Okotoks on a “Without Prejudice” basis during the discussion on the franchise agreement.

Position of Utilicorp Network Canada

The information on the purchase price of the property had been provided by Utilicorp Network Canada (Utilicorp) under the condition that it was only to be used for information in discussions between the parties regarding expropriation or negotiations for the renewal of the franchise agreement. The numerical value was not to be used by Okotoks as evidence for determining the value of the properties for the purpose of assessment.

Position of the Town of Okotoks

The information provided to Okotoks does not meet the tests for withholding it from use as evidence. Just because it was provided with the statement of “Without Prejudice” this did not restrict the evidence from being admissible.

Position of the Respondent

The Respondent considered the evidence irrelevant in the matter before the MGB because it found that the sale price had no impact on the regulated rates.

Agreed to Position of the Parties

The parties agreed that all three legal tests had to be met for the numerical value to qualify as being “Without Prejudice.” The parties referred the MGB to Costello and Dickhoff v. City of Calgary, 1994 (Judgment – April 12, 1994) as identifying three legal tests, which must be met before evidence can be withheld on the grounds of it being submitted on a “Without Prejudice” basis.

Legislation

In order to decide this matter the MGB looks to the direction contained in Section 496 of the Act.

496(1) The Board is not bound by the rules of evidence or any other law applicable to court proceedings and has power to determine the admissibility, relevance and weight of any evidence.

Decision on the Preliminary Matter

The sales information is admissible as evidence. The MGB will place the appropriate weight and determine the relevance of the information in the context of the matter before it.

Reasons

It is the conclusion of the MGB that the three conditions stated in Costello and Dickhoff v. City of Calgary as presented by the Complainants are conditions that must be met for the “Without Prejudice” claim to apply and, therefore, restrict the introduction of the sales evidence.

Starting with Condition A, it is the finding of the MGB that there is no documentation or evidence that would indicate that litigation has been contemplated and, therefore, this criteria has not been met and the sales information is not barred.

With regard to the other two conditions, the MGB finds the circumstances meet the test to withhold the information. With respect to Condition B, it is the finding of the MGB that communication had been initiated between Okotoks and Utilicorp and, therefore, this criteria has been met. Further with respect to Condition C, it is the finding of the MGB that the purpose of the communication was the negotiating of the franchise agreement. The MGB finds that the consideration of the sales evidence in this matter would impact the franchise discussions. Therefore, it is the finding of the MGB that the test requirement for Condition C is met.

In conclusion, the MGB finds that not all three criteria have been met and, therefore, the evidence is admissible.

Further, the MGB applies Section 496 of the Act to this preliminary matter and concludes that the law relating to court proceedings regarding “Without Prejudice” is not applicable to the preliminary matter before the MGB. The MGB will, in the context of the matter before it, determine the relevance and the weight it should place on the sale of the subject properties and related evidence.

BACKGROUND

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At issue in this complaint is the correctness of the assessed value of the linear property on electric power systems owned by Utilicorp in Okotoks and Pincher Creek.

Utilicorp purchased the electric power systems (ELE) in Okotoks and Pincher Creek from TransAlta Utilities Corporation (TransAlta) in the year 2000.

The purchase price of the province wide electric power system in 2000 of ELE by Utilicorp from TransAlta was 1.5 times the net book value of depreciable assets at the transfer date. As at December 31, 1999 the net book value of the distribution assets of TransAlta was estimated to be \$472 million. The price for the business being sold was approximately \$645 million and included 90,000 kilometres of low-voltage distribution power lines throughout the province of Alberta. While the price of \$645 million included the distribution and retail portion of the business, in submissions before the Alberta Energy and Utilities Board (AEUB) the component of the distribution property was broken down separately. The distribution system was given a net book value of \$587 million in submissions to the AEUB and a value of \$574 million on the 1999 Refiling by TransAlta. In 2000 Utilicorp sold the retail portion of the business to Epcor Energy Services (Alberta) Inc. for \$110 million.

Okotoks and Pincher Creek are currently without a franchise agreement with Utilicorp. As part of making its assessment regarding possible purchase price of the systems in Okotoks Utilicorp made a presentation to Okotoks outlining a without prejudice purchase price of \$20.5 million. In Okotoks the 2000 Linear Property Assessment for ELE was \$2,862,490. In a similar presentation to Pincher Creek Utilicorp submitted a purchase price of \$4.5 million. In Pincher Creek the linear property assessment was \$1,299,120. In 1999 the assessments were \$2,715,410 and \$1,300,120 respectively.

The Respondent prepared the linear assessments for the ELE in Okotoks and Pincher Creek by calculating the base cost to the year each system was constructed, applying the appropriate age conversion factors, applying the appropriate customer hook up factors, and applying the appropriate depreciation identified in the respective Regulations and manuals. The results were the assessment values of \$2,862,490 for Okotoks and \$1,299,120 in Pincher Creek for the assessment year under complaint.

ISSUES

In order to decide this matter, the MGB must resolve the following issues:

1. Is the valuation standard for linear property market value, fair actual value or a specific standard based on a set formula?

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2. Should the assessment reflect the sale price of the electric utilities in each municipality? Should the share value between TransAlta and Utilicorp have an impact on the assessed value?
3. Is linear property, specifically ELE, similar to other types of non-linear property in the municipalities? Can fairness and equity of the assessment be tested between ELE property and other types of non-linear property in the municipalities?
4. Does the MGB have jurisdiction to deviate from the legislation in the assessment of linear property?
5. To correct the inequity will the MGB ask the Minister of Municipal Affairs to review the electric power rates and related assessment policy?
6. Were the inventory numbers used by the Designated Linear Assessor in determining the linear assessment correct? Did the assessment in Pincher Creek include all the new residential connections?
7. Is depreciation properly applied?
8. Is the assessment too low?

LEGISLATION

In this case the Designated Linear Assessor argues that his/her role is to use information produced from the records of the AEUB and to apply the Municipal Government Act (Act), Alberta Regulations (Regulations) and Minister's Guidelines (Guidelines) in the preparation of linear assessments related to electric power systems in the two municipalities. To decide the issues related to this complaint the MGB looks to the following direction contained in the legislation.

Municipal Government Act

Electric power systems are included in the definition of linear property contained in the Act.

284 (1)

(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

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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,

Section 292 is the primary source of guidance for the preparation of linear property assessments in the Act.

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.

The procedure for preparing a linear assessment is clearly defined in the legislation, Regulations and Guidelines.

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.*

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- (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.

Matters Related to Assessment and Taxation Regulation (AR 289/99)

The Regulation sets out the valuation standard for various types of properties and improvements. A specific standard is set for different types of properties.

4(1) The valuation standard for improvements is

- (a) the valuation standard set out in section 5, 6 or 7, for the improvements referred to in those sections, or*
- (b) for other improvements, market value.*

Section 6 (1) and (2) establishes the valuation standard for linear property and the procedures that the Designated Linear Assessor must follow for the assessment of linear property.

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.*

2000 MINISTER'S GUIDELINES FOR THE ASSESSMENT OF FARMLAND, LINEAR PROPERTY, MACHINERY AND EQUIPMENT, RAILWAY

In deciding this complaint the MGB examines the following definitions.

3.000 PART 3: ASSESSMENT OF LINEAR PROPERTY IN A MUNICIPALITY

3.001 DEFINITIONS

In this Part,

- (a) "Assessment Year Modifier", means the factor which is applied to the base cost of linear property in order to determine its replacement cost for the year in which assessments are prepared for all property in the municipality;
- (b) "base cost" means the cost of an improvement, as prescribed in the *2000 Alberta Linear Property Assessment Manual*;
- (c) "linear property" has the meaning given to it in the Act;

- (d) “replacement cost” means the typical cost to replace an improvement with a modern unit in new condition.

The MGB examines the following method of calculation required for the preparation of linear assessments.

3.002 CALCULATION OF ASSESSMENT

The assessed value of linear property in a municipality, excluding wellsite land, shall be calculated by:

- (a) establishing the base cost as prescribed in Schedule A of the *2000 Alberta Linear Property Assessment Manual*;
- (b) multiplying the base cost by the appropriate Assessment Year Modifier prescribed in Schedule B of the *2000 Alberta Linear Property Assessment Manual*, to determine the replacement cost in the assessment year;
- (c) multiplying the amount determined in clause (b) by the appropriate depreciation factor prescribed in Schedule C of the *2000 Alberta Linear Property Assessment Manual*; and
- (d) if applicable, adjusting the amount determined in clause (c) for additional depreciation as prescribed in Schedule D of the *2000 Alberta Linear Property Assessment Manual*.

The Guidelines then prescribe the specific methodology for completing linear assessments for electric power system properties.

2000 Alberta Linear Property Assessment Manual

1.000 SCHEDULE A – BASE COST

The base cost represents the replacement cost of linear property in 1994.

1.001 LINEAR PROPERTY NOT DESCRIBED IN SCHEDULE A

The cost factors in Table 1, 2, and 3 and the formula below shall be used to determine the base cost for linear property that is *not* described in Schedule A.

Formula: Base Cost = ac X cf

Where ac = the cost of linear property in the year it was constructed, as determined by the assessor.

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cf = is the factor to convert the cost of the linear property (ac) from the year it was constructed in, to its cost in 1994.

1.001.100 TABLE 1 – Cost Factors For Electric Power Systems

(For brevity purposes, the Cost Factor Table is not reprinted in this order)

1.003 ELECTRIC POWER SYSTEMS (ELE)

1.003.100 Electric Power Distribution Systems

FORMULA: Base Cost = n X rate per customer hookup in each component type

Where n = the number of customer hookups in each component type

The manual sets out a specific depreciation schedule for electric power systems. For brevity purposes, the table of rates per customer hookup is not reprinted in this order.

3.000 SCHEDULE C – DEPRECIATION

3.001 ELECTRIC POWER SYSTEMS DEPRECIATION

The depreciation factor for electric power systems is 0.75, unless otherwise specified in this section.

Note: Procedure for using Depreciation Tables 3.001.300, 3.001.400 and 3.001.500

(For brevity purposes, the depreciation tables are not reprinted in this order)

4.000 SCHEDULE D – ADDITIONAL DEPRECIATION

4.001 ELECTRIC POWER SYSTEMS DEPRECIATION FACTORS

For any depreciation that is *not* reflected in Schedule C, the assessor designated by the Minister may adjust for additional depreciation provided acceptable evidence of such loss in value exists.

In order to decide the issues related to the jurisdiction of the MGB, the MGB carefully examined the following sections of the Act. Section 488(1)(a) gives the MGB jurisdiction to hear complaints regarding linear assessments. Section 499(1) gives the MGB the jurisdiction to change a linear

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assessment within the boundaries designated in Section 492, so long as the MGB does not alter any assessment that is fair and equitable in regards to the assessment of similar properties.

488 (1) The Board has jurisdiction

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

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

- (a) dismiss a complaint or a complaint that was not made within the proper time;*
- (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;*

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.*

The MGB must decide if everything the assessor has done in preparing the assessment on the subject property has been undertaken in a fair and equitable manner. If fairness and equity applies to all the actions of the assessor the MGB is required by Section 499 (2) to also determine whether fairness and equity has been achieved with similar properties in the municipality.

499 (2) The Board must not alter

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

In order to address the request of the Complainants to refer the matter to the Minister, the MGB examines the jurisdiction outlined in Section 516 of the Act.

516 The Board may refer any assessment that it considers unfair and inequitable to the Minister and the Minister may deal with it under sections 571 and 324.

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571 (1) The Minister may require any matter connected with the management, administration or operation of any municipality or any assessment prepared under Part 9 to be inspected

- (a) on the Minister's initiative, or*
- (b) on the request of the council of the municipality.*

324 (1) If, after an inspection under section 571, the Minister is of the opinion that an assessment

- (a) has not been prepared in accordance with the rules and procedures set out in this Part and the Regulations,*
- (b) is not fair and equitable, taking into consideration assessments of similar property, or*
- (c) does not meet the standards required by the Regulations,*

the Minister may quash the assessment and direct that a new assessment be prepared.

SUMMARY OF COMPLAINANTS' POSITION

1. Were the inventory numbers used by the Designated Linear Assessor in determining the linear assessment correct?

The assessment base in Okotoks increased between 7 to 8 percent from 1999 to 2000.

Pincher Creek's ELE assessment decreased from 1999 to 2000 by \$100,000. The system expanded between 1999 and 2000 by the addition of 20 new residential lots.

2. Should the linear property be assessed at market value to be fair and equitable in relation to the class of other non-residential property in the municipality?

At the Utilicorp presentation Okotoks was quoted a without prejudice purchase price of \$20.5 million. The assessment of the linear property in Okotoks totals \$2,862,490. This includes Utilicorp property and other linear property of TransAlta (assessed at \$11,150). This assessment is not equitable in relation to the assessment of other non-residential property in this municipality. Similarly, Pincher Creek was quoted a without prejudice price of \$4.5 million and the assessment of the ELE property is only \$1,299,120. This assessment is also not equitable in relation to the assessment of other non-residential property.

The assessment base of other non-residential properties in Okotoks increased between 7 to 8 percent from 1999 to 2000. The increase in ELE assessment from 1999 to 2000 is only 5.4 percent.

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It has been recognized in Canada that property is to be assessed on the “common basis of fair actual value so that the cost of municipal government will fairly be born by taxpayers in proportion to the relative values of the assessable properties.” Further, such assessment must be equitable. This position is supported by court decisions: The County of Strathcona No. 20 v. The Alberta Assessment Complaint Board and Shell Canada Limited (1995) and Bramalea Ltd. v. British Columbia (Assessor for Area 9 – Vancouver) (1990). In addition, in the court decision, T. Eaton Realty Co. v. Alberta (Assessment Complaint Board)(1992) it was determined an analysis of fair market value must have relation to the underlying benchmark of market value.

Prior to the year 2000 the assessor did not have a market driven indication of value or market value of this particular ELE. In 2000 the ELE was sold to Utilicorp, which paid 1.5 times the net book value. This was an arm’s length transaction between two willing parties and provides a very good indication of the value of the ELE.

While the quote provided by Utilicorp to Okotoks of \$20.5 million and to Pincher Creek of \$4.5 million may be taken as a forced sale position, they still provide an indication as to actual value which far exceeds the \$2.8 million and \$1.3 million respectively, found in the Linear Property Assessments.

The mandated formula in the Guidelines has no relationship to the actual value of the ELE, as evidenced by the AEUB decision and the position taken by Utilicorp with Okotoks and Pincher Creek. The Guidelines introduce a factor which is not compatible with the determination of fair actual value.

3. Is depreciation properly applied?

There was no evidence presented by the Complainants on this issue.

4. Does the MGB have jurisdiction to deviate from following legislation in the assessment of linear property?

ELE is assessed pursuant to section 292 of the Act and Regulation 289/99. Regulation 289/99 requires the assessor to follow the procedures set out in the Alberta Linear Property Assessment Guidelines (Guidelines). There is nothing in either the Act, the Regulation or the Guidelines binding the MGB to the Guidelines.

Section 499(1)(b) of the Act permits the MGB to make a change to an assessment for linear property. The MGB has the jurisdiction to make a change to the assessment in this case and, based on the principles of fairness in municipal taxation, it ought to make such a change.

5. To correct the inequity will the MGB ask the Minister of Municipal Affairs to review the electric power rates and related assessment policy?

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In addition to the MGB's authority to deal with an assessment, the MGB has the authority to refer an inequitable assessment to the Minister of Municipal Affairs. This clearly is a situation where the assessment is inequitable having regard to the actual value of the ELE owned by Utilicorp as compared to the assessed value. The undervaluation of the ELE may also be indicative of an entire class being undervalued, impacting on the fairness of municipal taxation. It is respectfully submitted that this as an appropriate matter to be referred to the Minister.

6. Should the share value between TransAlta and Utilicorp have an impact on assessed value?

While the quote provided by Utilicorp to Okotoks of \$20.5 million and to Pincher Creek of \$4.5 million may be taken as a forced sale position, they still provide an indication as to actual value which far exceeds the \$2.8 million and \$1.3 million respectively, found in the Linear Property Assessments.

7. Is the assessment too low?

The assessment does not reflect the sale value of the property from TransAlta to Utilicorp, the purchase value quotes provided to the municipalities by Utilicorp or the assessment increases to other non-residential properties.

SUMMARY OF RESPONDENT'S POSITION

1. Were the inventory numbers used by the Designated Linear Assessor in determining the linear assessment correct?

The specific electric power systems and street lighting properties are detailed in the report Linear Property Assessment, Property Details - Electric Power And Telecommunication Systems which is attached to the Linear Property Assessment Notice for Assessment Year 2000 issued to Okotoks and Pincher Creek.

The property assessed in the subject complaints is not the entire province wide electric distribution business previously transferred by TransAlta to Subco in 1999 (shares of which were purchased by Utilicorp at a price equal to 1.5 times the net book value of the depreciable assets, as approved by the AEUB). The electric power systems under these complaints were assessed by the Designated Linear Assessor and, for the most part, are lower voltage electric lines which run from the larger transmission lines to the homes or local businesses which are the direct consumers of electricity or power with Okotoks and Pincher Creek. In addition, the street lighting owned by Utilicorp has also been assessed.

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To prepare the linear property assessments under complaint, on or about December 4, 2000, the Linear Property Assessment Unit requested completion of necessary reporting to it by Utilicorp in accordance with its Reporting Information Handbook. On or about January 12, 2001 Utilicorp responded with its assessment detail report.

The electric power systems were assessed as prescribed by law based on the relevant component types and number of customer hookups contained within the systems. In the case of street lighting, the specifications and characteristics were the number of poles of the component type. The formula set by law was applied (including application of the regulated and standardized base costs, depreciation factors and modifiers) and the proper assessment was prepared. The assessments correctly reflect the specifications and characteristics of the subject electric power systems property as at October 31, 2000.

2. Should the linear property be assessed at market value to be fair and equitable in relation to the class of other non-residential property in the municipality?

The complaint is without merit as it is based upon irrelevant facts and mistaken understanding of the relevant valuation standard. The facts are irrelevant to the preparation of the linear assessments which are the subject of these complaints. The Towns' briefs relate to public utilities sales transactions and public utility forced sale matters. Such issues are not inputs into the Designated Linear Assessor's preparation of the assessment of electric power systems which assessment complies with the requirements of the Act and its related subordinate legislation.

3. Is depreciation properly applied?

The formula set by law was applied (including application of the regulated and standardized base costs, depreciation factors and modifiers as outlined in Schedule C – Depreciation and Schedule D – Additional Depreciation of the Guidelines) and the proper assessment was prepared.

4. Does the MGB have jurisdiction to deviate from following legislation in the assessment of linear property?

By filing a linear assessment complaint, the Complainant cannot appeal or contest the valuation policies/assessment policies imposed by the Act and the relevant subordinate legislation. Clearly the Guidelines are law and must be complied with by the Designated Linear Assessor, and, on appeal, by the MGB. Moreover, given the mandatory language of the Act, the Regulation and the Guidelines themselves, the valuation standard which represents assessment policy must be abided by. Neither the Designated Linear Assessor nor the MGB may modify assessment or tax policy. This complaint, raising concerns or issues with assessment policy and requesting modifications or change is, with respect, beyond the jurisdiction of the MGB.

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5. To correct the inequity will the MGB ask the Minister of Municipal Affairs to review the electric power rates and related assessment policy?

There is no reason for the MGB to ask the Minister of Municipal Affairs to review ELE rates. A Ministerial committee is currently undertaking a review.

6. Should the share value between TransAlta and Utilicorp have an impact on the assessed value?

The valuation standard for linear property is the formulaic valuation standard prescribed by law. Linear properties are not assessed at market value or at fair actual value.

The individual electric power system in Okotoks and Pincher Creek were not the property which the AEUB referenced as having been purchased for a price of 1.5 times the net book value. A clear read of the AEUB decisions show that the entire province wide distribution business was the subject of the proposed purchase price.

7. Is the assessment too low?

The linear property assessment is correct, accurate, fair and equitable because it has been properly prepared by the Designated Linear Assessor in accordance with the mandatory requirements of the Act and related subordinate legislation. In support of this claim the DLA outlined the process followed in completing the linear assessment on the ELE properties under complaint. Section 292 of the Act, Alberta Regulation 289/99, the 2000 Guidelines and the Alberta Linear Property Manual were the authorities used in calculating the assessed value. Specifically, Section 3.002 of the 2000 Minister's Guidelines for the Assessment of Farmland, Linear Property, Machinery and Equipment, Railway was followed in calculating the assessment. Calculations were made using the inventory information supplied by the property owner, Utilicorp. Since the inventory property assessment was properly prepared according to the requirements established by the Act and related subordinate legislation there should be no change made to the assessment.

SUMMARY OF INTERVENER'S POSITION

1. Were the inventory numbers used by the Designated Linear Assessor in determining the linear assessment correct?

Okotoks and Pincher Creek do not challenge the specifications or characteristics of the assets or the inventory thereof.

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2. Should the linear property be assessed at market value to be fair and equitable in relation to the class of other non-residential property in the municipality?

The Complainants contend that Utilicorp's purchase of the electric distribution business somehow establishes a market value for assessment purposes and, therefore, of the appealed linear property assets. This is misleading and incorrect. The statements are made without a proper consideration of a number of factors including the business value in the transaction, the non-linear asset values, the non-assessable assets and non-assessable allowances. If the TransAlta acquisition is relevant to the assessment in any manner, when properly analyzed it demonstrates that the linear assets that form this complaint may well be over-assessed. The TransAlta transaction involved the purchase of a going concern with a large component of non-realty and non-linear elements including buildings, vehicles, computer equipment, a trained work force, intangibles items such as goodwill, customer retail bases and premiums. Once the non-linear assets are removed from the transaction the total fixed linear assets remaining would be valued at approximately \$303.1 million dollars pursuant to the transaction.

The total linear assessment of Utilicorp properties in Alberta amounts to \$367.6 million dollars. Should the transaction be any relation to assessment value, Utilicorp would be entitled to a reduction of \$64.5 million dollars in its linear assessment across the province. Utilicorp's linear assets in Okotoks and Pincher Creek, based upon type and size of service would be 0.78% in Okotoks and to 0.35% in Pincher Creek.

The reference to the premium of 1.5 times the net book value does not form a part of the customer rate base and, therefore, is not recoverable through the rate process. The AEUB confirmed the premium was not to be passed on to customers. If the premium of 1.5 times net book value were to be used, all non-linear assets, all non-realty assets, all intangible assets and all non-assessable assets must be removed from the overall purchase price before there could be any indication of fair actual value, market value, or assessable costs for the linear properties subject to this appeal.

It is well settled in Alberta and other jurisdictions that a taxpayer is entitled to an assessment that is both correct and equitable. Where equity and correctness conflict the taxpayer is entitled to the lower of the two. The court decisions in the County of Strathcona No. 20 v. The Alberta Assessment Appeal Board and Shell Canada Limited (1995), 165 A.R.300 (C.A.), Bramalea Ltd. V. British Columbia (Assessor for Area #9 - Vancouver) (1990) 76 D.L.R. 53 (B.C.C.A.) support the position on fairness, equity and correctness.

The intent of the method of assessment, regulated rates, is to provide uniform and equitable assessments of linear properties throughout the province. All linear assets are to be treated alike and the Designated Linear Assessor would have subscribed similar assessments to other like properties, as has been done with the subject properties, with a view towards equity.

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Given the forgoing, market value indicators cannot be used to increase the assessments. In a cost base system, they may be relevant in the quantification or identification of depreciation under appropriate circumstances. There is no precedent and no theory to support the notion of increasing a cost based assessment for “market” reasons.

3. Is depreciation properly applied?

The Complainants provided no evidence to suggest the depreciation was wrongly applied.

4. Does the MGB have jurisdiction to deviate from following legislation in the assessment of linear property?

Legal principles cited by Okotoks and Pincher Creek relate to entirely different circumstances and are of no assistance in these complaints. Further, remedies being proposed amount to either (a) requesting the Board to upset equity, entirely to the prejudice of Utilicorp and, therefore, are beyond the jurisdiction of the MGB; or (b) entirely grounded in a desire to transform public assessment, also beyond the jurisdiction of the MGB.

The assessment of linear property in the province falls to the exclusive jurisdiction of the Minister’s designate. In arriving at an assessment the Designated Linear Assessor is instructed to follow the procedures set out in the Act, the Regulations, the Linear Property Assessment Manual and the Guidelines.

5. To correct the inequity will the MGB ask the Minister of Municipal Affairs to review the electric power rates and related assessment policy?

The Department of Municipal Affairs has conducted and completed, in consultation with a number of stakeholders, including the AUMA, a new linear rate study for the electricity industry, but to date has not taken steps to implement those new rates.

The Complainants’ request for a referral of an inequitable assessment to the Minister is not a matter that need be brought before the Municipal Government Board. There are appropriate channels to seek a change in public policy. The complaints must be dismissed as they have no merit and only seek to turn the hearing process into a political forum. This type of conduct cannot be sanctioned by the Municipal Government Board.

6. Should the share value between TransAlta and Utilicorp have an impact on assessed value?

The statements made by Okotoks and Pincher Creek that Utilicorp’s purchase of the electric distribution business of TransAlta somehow establishes a market value for assessment purposes and,

therefore, of the appealed linear property assets, is misleading and incorrect. The statements are made without a proper consideration of a number of factors including the business value in the transaction, the non-linear asset values, the non-assessable assets and non-assessable allowances. If the TransAlta acquisition is relevant to the assessment in any manner, when properly analyzed it demonstrates that the linear assets that form this complaint may well be over-assessed.

7. Is the assessment too low?

There is no challenge to the application of the Regulations in the preparation of the assessment.

FINDINGS

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

1. The valuation standard for linear property and, more specifically, electric power systems is not market value but rather a value based on a regulated cost formula.
2. An assessed value for an electric power system is not required to reflect a sale transaction or a share value.
3. Linear property, specifically electric power systems, is not similar to other types of non-linear property within Okotoks and Pincher Creek
4. The role of the MGB is to adjudicate disputes on incorrect or unfair or inequitable assessments within the prescribed legislative framework.
5. Fairness and equity is established by the proper application of the Guidelines, therefore, the MGB sees no reason to ask the Minister to do a review.
6. All inventory numbers for the electric power systems in Okotoks and Pincher Creek are found to be correct and the correct depreciation is applied.
7. The MGB did not receive any evidence that the depreciation was incorrectly applied.
8. The assessment of Okotoks and Pincher Creek was correct according to the application of the regulated rates.

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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 assessments of the subject linear properties in Okotoks and Pincher Creek are confirmed.

REASONS

The MGB accepts the argument of the Respondent for the following reasons:

Overview:

The Respondent is required by legislation to apply the regulated rates as set out in the Guidelines for preparing assessments on linear property, specifically electric power systems. The valuation standard for electric power systems is not market value but rather a value based on a regulated cost approach as set out in the formula in the Guidelines. Further, the Respondent convinced the MGB that the regulated rates are properly applied in establishing the assessments in Okotoks and Pincher Creek. The Complainants did not provide any evidence that the regulated rates were applied incorrectly.

Fairness, equity and correctness is to be applied in relation to assessments of similar property, however, other non-linear classes of property are not similar property. There was no argument or evidence lead by the Complainants to show that the assessment of the electric power systems in the Towns are not treated equitably with similar properties. The MGB is not convinced by the Complainants to apply the test of fairness and equity between dissimilar properties or for the MGB to take on an expanded role by ignoring the duly passed legislation contained in the Act, Regulations and Guidelines. The MGB does not accept the request of the Complainants to become a lobbyist for one party in the determination of assessment and tax policy.

Valuation Standard – Linear Property Not Valued At Market Value

The Complainants went to great lengths to convince the MGB that the proper valuation standard for electric power systems should be market value. The Complainants supported their argument by referencing significant case law (Strathcona, Bramalea & T. Eaton). The MGB reviewed this case law very carefully since this case law does set the cornerstone for assessment and taxation law in Alberta.

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Firstly, the MGB observes that in the Strathcona case the legislation at the time was the Municipal Taxation Act, not the current Municipal Government Act. Under the Municipal Taxation Act property assessment was based on “fair actual value” requiring that an improvement of any class was to be assessed at the prescribed percentage of its fair actual value. The MGB accepts the significant principle coming out of Strathcona case that property assessed on the basis of fair actual value or market value must result in a fair and equitable distribution of the tax load amongst taxpayers. However, the current Act and Regulations sets out a different valuation standard for linear property, a regulated formula approach based on costs, formula inputs and prescribed depreciation, none of which are required to reflect market value. The MGB concludes that this is a purposeful intent made by the legislators and the MGB cannot operate outside of this legislative direction.

The MGB reaches this conclusion from an examination of the combined directions in Section 289 (2) (b) of the Act and Section 4 and 6 of the Matters Relating to Assessment and Taxation Regulation AR 289/99.

289 (2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*
- (b) the valuation standard set out in the regulations for that property.*

The Regulation states as follows:

4(1) The valuation standard for improvements is

- (a) the valuation standard set out in section 5, 6 or 7, for the improvements referred to in those sections, or*
- (b) for other improvements, market value.*

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.*

The Guidelines then establish a valuation standard based on various formulas related to date of construction, cost conversion factors, component parts and depreciation factors.

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The MGB carefully reviewed the principles generated from the lead case of Bramalea. This case also emphasizes the importance of an assessment based on the principles of a correct relationship to market value and an equitable relationship with similar properties. However, Bramalea also defers to the specific legislative direction.

“So the Act, read in light of the general law, requires, *except where otherwise clearly stated*, that assessments both be at “actual value” and also equitable as between taxpayers.” (MGB emphasis).

In reviewing Section 289 of the Act and Sections 4 and 6 of the Regulation it is clear to the MGB that the legislators intended that the valuation standard for linear property be something other than market value: a standard based on a formula approach outlined in the Guidelines. The MGB also observes that this is not an inconsistent observation since other properties like agricultural operations also have a valuation standard other than market value. There is clear legislative intent to assess certain properties differently from other properties.

Although it is interesting to see the differences between the sales prices of the various utilities in a provincial context and in a municipality specific context, this evidence is not used for determining the valuation standard of the assessed value for electric power systems as prescribed by the legislation, the Regulations and the Minister’s Guidelines. However relevant to the setting of legislative policy, it is not relevant to the adjudication within a specific predetermined legislative scheme which has set a different valuation standard for linear property.

Equity With Other Properties

Throughout the presentation, the Complainants emphasized that non-linear property is sharing an increased tax burden compared to linear property and, therefore, was not being treated equitably. Section 499 (2) of the Act places a limitation on the MGB’s authority to consider whether equity has been achieved between similar properties in a municipality not between all properties in the municipality. Similarly, Section 571 of the Act authorizing a Ministerial review emphasizes equity with similar properties.

The Complainants failed to convince the MGB that non-linear property and linear property are similar properties. Again, in the context of the scheme of the legislation, Regulations and Guidelines a different valuation standard has been set for different properties and the MGB can only examine equity between similar properties. The fact that there is a different tax burden upon one type of property versus another type of property is the decision of the legislators and it is not within the authority of the MGB to question the rational of their decisions, but to insure that their decisions have been properly applied.

Role of the MGB / Referral to The Minister

The Complainants attempted to convince the MGB that it is not bound to the legislation, Regulations and Guidelines. The Complainants failed to do so. None of the case law presented by the Complainants suggested that the MGB could act outside the applicable legislation. In addition, based on the above reasoning, the MGB finds nothing ambiguous in the legislation, Regulations or Guidelines. The role of the MGB is to adjudicate matters within the context of the legislation, not to create legislation or new policy direction. This seems to be the desire of the Complainant, however, the MGB does not see any legislative direction or case law giving the MGB this authority.

As well, the MGB observed no evidence to suggest that the Respondent had improperly applied the legislation, Regulations and Guidelines or applied a technique not founded in the these documents. Therefore, there has been no reverse onus created on the Respondent.

The Complainants also requested that the MGB submit this matter to the Minister. The only referral authority of the MGB rests in Section 516 of the Act. Prior to referring a matter under Section 516 of the Act, the MGB must be convinced that the assessment was prepared in non-compliance with the procedures in the Act, that the assessment was not equitable with similar property and the valuation standard was not met. Nothing presented by the Complainants convinced the MGB that any of these criteria were not achieved by the Respondent and as a result the MGB is not prepared to make a referral pursuant to Section 516 of the Act.

Correctness of the Inventory / Depreciation

Little or no evidence was presented that brought into question the inventory numbers of the Respondent including the 20 “new” services that Pincher Creek claimed should have been added to the year 2000 assessment. Since no evidence was given to support that the new services are not included in the assessment or that any other inventory discrepancies exist, the MGB finds that the assessment is properly established relative to property inventory used by the Respondent. There is little or no evidence provided by the Complainants that the depreciation applied is incorrect, therefore, the MGB determines that the depreciation schedule is properly applied.

COSTS

Issue

1. Are the complaints from Okotoks, Pincher Creek and AUMA frivolous?

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2. Have the Complainants abused any of the processes as outlined in the MGB Procedure Guide?
3. Should Utilicorp be awarded party costs?

Legislation

In regards to requests made by a party to be awarded costs resulting from actions of another party the MGB has the authority to consider and decide such requests as outlined in Section 501.

501 The Board may determine the costs of and incidental to any hearing before it and decide by whom and to whom the costs are to be paid.

The MGB may set its own rules regarding its procedures as stated in Section 523.

523 The Board may make rules regulating its procedures.

The MGB has established its procedures for dealing with requests for costs in its Procedure Guide, as approved by the MGB in January of 2000. Clause 4.2 (page 9) identifies the MGB procedures for deciding requests for party costs.

4. REQUEST FOR COSTS

4.1 Introduction

Pursuant to section 501 of the Act, the issue of costs may be addressed by all parties to the appeal or by the Board.

Parties subject to costs under this section must have the opportunity to provide their positions on the request for costs prior to a decision on the costs.

Request for costs may be considered by the Board where it is of the opinion that as a result of a party abusing the appeal process and through such abuse a party or the Board incurring additional or unnecessary expenses. The Board may consider cost requests for expenses incurred by a party and/or by the Board. Board costs result from a loss of hearing time or the creation of additional hearing time owing to an abuse of process.

4.2 Request for Party Costs

The Board may award costs to cover all or part of expenses incurred by one party owing to a breach by the other party of any of the rules in this Guide or as established by a panel for a specific hearing.

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- a) The Board may award costs against one or more parties and/or their representatives, and instruct by whom and to whom those costs shall be paid.
- b) As determined by the Board, costs may include:
 - i) travel expenses at reasonable or actual rates;
 - ii) hearing related out-of-pocket expenses (for example, parking, meals, etc.);
 - iii) fees and travel expenses of witnesses;
 - iv) fees for legal counsel; and
 - v) other related hearing costs that may be incurred.
- c) The Board may require supporting invoices of costs.
- d) The Board may deal with the request for costs at the first instance it is raised **or** it may request that parties exchange information and rebuttals within a specified time period and may set a separate time to deal with the matter of costs.
- e) The Board may decide to consider the request for costs through oral representation or it may limit the presentations to written submissions.
- f) The Board will deal with a request for costs in a timely fashion. The target timeline for a decision on costs is sixty (60) days from the date of the hearing, or the date of the request where no hearing is deemed necessary, or a greater time if deemed necessary by the Board in complex matters.

Position of Intervener, Utilicorp

Okotoks and Pincher Creek have put Utilicorp to unnecessary expense by their pursuance of these meritless complaints. The MGB is not the appropriate forum for Okotok's and Pincher Creek's complaints. As the complaints are clearly without merit and the ultimate relief sought is available to Okotoks and Pincher Creek without invoking the complaint process Utilicorp requests that it be awarded costs from Okotoks and Pincher Creek.

Position of Complainants

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The MGB clearly has the jurisdiction to hear complaints about assessment for linear property. If the MGB considers an assessment unfair and inequitable, it may refer any assessment to the Minister. The Act allows the MGB to hear a complaint on the very matter which Okotoks and Pincher Creek has brought before the MGB, therefore, it is not frivolous which is defined in dictionaries as “lacking in substance”, or “of little importance.”

It is respectfully submitted that this is a proper complaint to be heard by the MGB and there is nothing which warrants awarding costs as requested by Utilicorp. In fact the reason the matter comes before the MGB is the failure by the Minister to revise the Guidelines to reflect the evidence of value.

Findings

1. The complaints as submitted are allowed under Section 492(1)(c) of the Act.
2. No abuse of process was found to have taken place on the part of the Complainants.

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 request to award costs is denied.

Reasons

The linear complaints were submitted by the Complainants as allowed under Section 492(1)(c) of the Act. The Complainants did not disadvantage the Intervener in the timing of the exchange of evidence or through any actions that would lead to a delay in the hearing process. Further, there was no conduct by the Complainants that could be construed as being unreasonable. While the MGB found that the Intervener and the Respondent are correct in their position that linear property is to be assessed using regulated rates, the Complainants acted in good faith in bringing forward their request for an interpretation of legislation with respect to the valuation of electric power systems.

These specific issues regarding electric power systems have not been previously before the MGB to decide. In addition, it does not state in the legislation that municipalities or assessed persons are limited

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in what they may complain on in relation to the assessment. Also, the legislation does not limit the evidence or argument that a party can present to support their complaint.

As a result, the MGB cannot find any reason to support the claim that the complaint is frivolous and there is no evidence that the complainants participated in or caused an abuse of process that affected the Intervener. As a result the MGB has determined that costs are not warranted and are not to be awarded. The MGB does, however, recognize that the decision to not award costs is due to the position that these respective complaints have not been previously heard and decided. It would suggest, however, that MGB may view the awarding of costs differently in the future for submissions of complaints on the same or similar matters. This is due to the MGB being required to apply the legislation and Guidelines regarding linear properties assessed according to regulated rates.

No costs to either party.

It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta, this 18th day of June 2002.

MUNICIPAL GOVERNMENT BOARD

(SGD.) C. Bethune, Presiding Officer

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Sheila C. McNaughtan	Solicitor for the Complainants
Grant Roeland	Representative for the Complainants (Town of Okotoks)
Leo Ludwig	Representative for the Complainants (Town of Pincher Creek)
Mayor Ernie Patterson	Representative for the Complainants (Vice President AUMA)
Michele Annich	Solicitor for the Respondent
Gilbert J. Ludwig	Solicitor for the Intervener
Doug McLennan	Designated Linear Assessor, AMA
Grant Clark	Coordinator, Telecommunications and Electric Power, AMA
Scott McNaughton	Senior Property Tax Advisor, Utilicorp Network Canada
Brian Curtis	Utilicorp Network Canada

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
Exhibit 1C	Brief of Complainants Town of Okotoks
Exhibit 2C	Brief of Complainants Town of Pincher Creek
Exhibit 3C	Brief of Complainants AUMA
Exhibit 4R	Brief of Respondent DLA Re: Town of Okotoks
Exhibit 5R	Brief of Respondent DLA Re: Town of Pincher Creek
Exhibit 6R	Brief of Intervener Utilicorp Re: Town of Okotoks
Exhibit 7R	Brief of Intervener Utilicorp Re: Town of Pincher Creek
Exhibit 8C	Rebuttal Argument of Complainants Town of Okotoks
Exhibit 9C	Rebuttal Argument of Complainants Town of Pincher Creek
Exhibit 10 R	Rebuttal Argument of Respondent DLA to Okotoks
Exhibit 11R	Rebuttal Argument of Respondent DLA to Pincher Creek
Exhibit 12C	Will Say Statements Town of Okotoks
Exhibit 13C	Will Say Statements Town of Pincher Creek
Exhibit 14C	Will Say Statements AUMA
Exhibit 15R	Will Say Statements DLA – Doug McLennan

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Exhibit 16R
Exhibit 17R

Will Say Statements DLA – Grant Clark
Will Say Statements Utilicorp