

## **BOARD ORDER: MGB 091/05**

**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 2004 tax year filed on behalf of Kneehill County, Mountain View County, Municipal District of Northern Lights No. 22, and Wheatland County.

### **BETWEEN:**

Kneehill County, Mountain View County, Municipal District of Northern Lights No. 22, and Wheatland County, represented by LandLink Geographics Inc. - Complainants

- a n d -

Designated Linear Assessor for the Province of Alberta, represented by Bishop & McKenzie LLP - Respondent

### **BEFORE:**

Members:

T. Robert, Presiding Officer  
L. Atkey, Member  
R. Scotnicki, Member

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta on January 31 to February 2, 2005 and June 6, 2005.

The matters before the MGB are 2004 tax year linear property assessment complaints as detailed in Appendix "D" of this Board Order.

### **OVERVIEW**

The Complainants in this action are municipalities to which taxes are paid by owners/operators of linear property. The amount of taxes paid by the linear property owners results from their respective assessments prepared by the Designated Linear Assessor (DLA) for the Province of Alberta. The Complainants argue that the assessments prepared by the DLA for the subject properties are incorrect. They contend that the assessments are calculated using incorrect pipe segment lengths as recorded in the records of the Alberta Energy and Utilities Board (AEUB). The error is said to arise from the exclusive use of pipeline length recorded in the "attribute record" of the AEUB, which, in the subject cases, allegedly does not reflect the true length of the pipe segments. The true lengths of the pipe segments in the subject cases are said to be reflected in a different set of AEUB records known as the "graphical records" or, alternatively, in a length

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determined by calculating the distance between “to” and “from” locations reported on the attribute record.

### BACKGROUND

These complaints relate to certain linear properties residing in four different municipalities. The parties submitted an Agreed Statement of Facts prior to this hearing that was entered on the record as exhibit 5R. The content of the exhibit is as follows and only relates to facts agreed to before the hearing.

- “1. The Complainants allege that the DLA used incorrect lengths of pipe recorded in the files of the AEUB to prepare the 27 linear properties under appeal.
2. The AEUB records are comprised of the license, attribute and graphical files relating to a specific segment of pipe.
3. The license is a paper copy of an electronic record containing pipe specifications and characteristics that bears the approval signature of an authorized AEUB representative.
4. A signed license is the official record of the AEUB.
5. The information contained in the license is then recorded in the attribute file. The attribute file is an electronic copy of the license.
6. Data contained in approved applications are plotted on a base map, which is scaled 1:20,000 and is referred to as the graphical record.
7. The graphical record is representative of the information contained in the attribute record.
8. The DLA assessed the subject properties using pipe lengths recorded in the AEUB’s attribute records.
9. There is a discrepancy between the length of pipe recorded in the AEUB’s attribute records and the AEUB’s graphical records for each of the 27 properties.
10. The Complainants’ representative, LandLink, sent several letters to affected owners/operators requesting information detailing the owners’ understanding of what are the correct pipe lengths.

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11. Responses were received in respect of 4 subject properties (the “4 Properties”). These responses are attached hereto at Tab 1 together with the Complainants’ summary of the relevant AEUB data relating to the 4 Properties.
12. In respect of the remaining properties, no response was received by LandLink from the assessed owners. (the “23 Properties”)
13. The only information produced by the Complainants to indicate that each of the 23 Property assessments is incorrect are the discrepancies between the AEUB attribute and graphical records.”

On February 1, 2005, Mr. Vandenberg, a senior official with the AEUB and witness for the Respondent, offered to make further investigations into the apparent inconsistencies in the AEUB pipeline segment records identified by the Complainants. This offer was made during questions from the MGB during the course of the hearing and not in response to an order from the MGB for further information under section 497 of the Act. The hearing was adjourned to allow Mr. Vandenberg to carry out his investigations. It then reconvened on June 6, 2005 for him to present his findings. When the hearing reconvened, Mr. Vandenberg presented evidence concerning an audit that he had performed during the adjournment on a sample of the subject pipelines. This audit involved contacting owner/operators of the subject properties and requesting submission of revised segment lengths for the purposes of correcting the appropriate AEUB records. As a result of reports from the owner/operators, Mr. Vandenberg concluded that the graphical records – or, alternatively, the lengths calculated by the Complainants using the “to” and “from” locations on the attribute record - were most likely correct in all the subject cases. He also noted that in the case of pipelines containing more than one segment, the overall lengths of the pipelines could be correct, but improperly apportioned between the segments. Moreover, he was reluctant to change the attribute record without submission of revised data to correct these discrepancies, because doing so could impact the total length of the licence incorrectly. Mr. Vandenberg indicated that although the AEUB records contain the best information available for property assessment, their primary function lies elsewhere and their accuracy for assessment purposes cannot always be guaranteed.

### **Intervenors**

The Complainants in this case are the municipalities in which the subject pipelines are located. Therefore, the licensees - who are the assessed persons in these complaints - represent a large class of potentially interested third parties. In view of this fact, the MGB provided notice of this hearing to all affected assessesees, however, none attended the hearing.

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### Hearing by previous panel

The MGB began hearing the matters under complaint on September 9 and 10, 2004. However, following an adjournment on September 10, the Respondent filed a rehearing request. As explained in DL 138/04 and rather than dealing with the request, the original MGB panel recused itself from further involvement in the complaints. This action caused the MGB Administrator to restart the entire hearing process with fresh submissions and a new hearing before a different MGB panel. This course of action resulted in avoidance of a rehearing, submissions, and a written decision relating thereto.

### PRELIMINARY MATTERS

#### Recommendations

During the course of the hearing, recommendations for two of the segments under complaint were presented by the DLA.

First, the DLA recommended that for Linear Property Assessment Unit Identifier (LPAU-ID) 2125689 (owned by Husky Oil Operations Ltd. and located in Kneehill County) the assessment should be \$569,670. This recommendation resulted from confirmation by Husky Oil Operations Ltd. that the correct length should be 12.46 km within Kneehill County. The segment was originally assessed at 5.43 km. The overall length of the line was also confirmed by Husky Oil Operations Ltd. to be longer than the original assessed length. As a result, this change would also affect the assessment apportioned to Red Deer County. The MGB, however, does not have the jurisdiction to alter the assessment for Red Deer County because the property within Red Deer County is not under complaint.

Second, the parties recommended an assessment of \$61,840 for the pipeline with LPAU-ID 2154286 and located within Mountain View County. This recommendation reflects a change from the original assessment of \$0 assigned because of its permitted, yet assumed non-operational, status. A letter provided by the operator stated that the pipeline was indeed operational as of October 2003. Therefore, the segment is assessable and the calculated assessment is \$61,840.

The MGB adopts the following recommendations as agreed to by the parties.

LPAU-ID	Assessee	Municipality	Original Assessment	MGB Decision
2125685	Husky Oil Operations Ltd.	Kneehill County	248,260	569,670
2154286	Bonavista Petroleum Ltd.	Mountain View County	0	61,840

## **Withdrawals**

During the course of the hearing, the Complainants withdrew their complaints in respect of certain LPAU-IDs. These withdrawals are listed in Appendix “E” of this Board Order.

## **ISSUES**

The matter to be determined is whether the MGB should alter the DLA’s assessment of the subject properties to reflect a pipeline length other than that listed in the AEUB attribute record. In order to decide this matter, the MGB must decide the following specific issues:

1. Is the attribute record of the AEUB the only record to be used by the DLA in preparing a linear property assessment?
2. Should an inconsistency in the AEUB records lead to a correction of the assessment?
3. Should the MGB exercise its discretion to compel additional evidence under section 497 of the Act?

## **LEGISLATION**

To decide the above issues the MGB referred to the following relevant sections of the Act and associated regulations.

### ***Municipal Government Act***

Section 292 of the Act gives a broad outline of the standards, procedure and practice for the assessment of linear property. This section establishes the starting point in the assessment process for linear property. Section 292 points specifically to the standards set out in the regulations as the valuation standard for linear property; further, it provides for the preparation of linear assessments based on the records of the AEUB.

*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).*

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- (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 states that the DLA must apply the regulatory standards in a fair and equitable manner.

- 293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,
  - (a) apply the valuation standards set out in the regulations, and*
  - (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.*

Section 284 defines an assessor and assessment as follows.

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

- (c) “assessment” means a value of property determined in accordance with this Part and the regulations*
- (d) “assessor” means a person who has the qualifications set out in the regulations and
  - (i) is designated by the Minister to carry out the duties and responsibilities of an assessor under this Act,**

The MGB may make a change to the assessment for linear property, but may not alter an assessment that is fair and equitable.

*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) an assessment*

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

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*(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*

### ***Matters Relating to Assessment and Taxation Regulation 289/99***

The Regulations stipulate the valuation standard for linear property set out in the 2003 Alberta Linear Property Assessment Minister's Guidelines (Guidelines).

*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.*

### **2003 Alberta Linear Property Assessment Minister's Guidelines**

The Guidelines set out the standard for preparing linear assessments.

#### 1.002 Process for Calculating Linear Property Assessments

(c) Pursuant to section 6 (1) of the Regulation, the process for calculating pipeline linear property assessments is found in section 4.000 of the 2003 Alberta Linear Property Assessment Minister's Guidelines.

4.002 For linear property defined in section 284 (1) (k) (iii) (A) and (B) where that linear property is licensed by the AEUB and the linear property is contained in the records of the AEUB, the assessment must reflect the characteristics and specifications contained in the records of the AEUB as of October 31 of the assessment year.

4.006 For linear property described in 4.002 (a) the ACC is found in Table 4.2 and is determined using the combination of characteristics and specifications identified in 4.003 (a).

#### Table 4.3

For ACCs\* beginning with PL, n equals the length of pipe as contained in the records of the AEUB.

- \* assessment classification code (“ACC”) means the components of linear property shown on the Request for Information or, as determined by section 4.000 of the 2003 Linear Property Minister’s Guidelines using characteristics and specifications contained in the records of the AEUB or on the request for information.

**ISSUE 1. IS THE ATTRIBUTE RECORD OF THE AEUB THE ONLY RECORD TO BE USED BY THE DLA WHEN PREPARING A LINEAR PROPERTY ASSESSMENT?**

**Summary of Complainants’ Position (Issue 1)**

The Complainants submitted that all of the records of the AEUB, including the graphical records, may be used in preparing a linear property assessment. This is expressly permitted by section 292, which states that each assessment must reflect the “records of the Alberta Energy and Utilities Board.” The legislation does not specify that only the attribute records are to be used. In fact, by the use of the plural, the legislation contemplates the use of more than one type of record.

In support of this argument, the Complainants pointed to the Board Order MGB 001/04, in which the MGB stated in its reasons:

“In the case of conflicting records of the AEUB, affected parties to an assessment may introduce evidence other than the data contained in the AEUB records to clarify the records of the AEUB or, more importantly, to choose between conflicting records at the AEUB for the purpose of determining the fundamental basis of the linear property assessment, the length of the pipe.”

Further, in the same Board Order:

“The DLA should use graphical records and attribute records to determine the length of a pipe that is the subject of a linear assessment. Both attribute records and graphical records are AEUB records.”

Also in support of their argument the Complainants quoted from Board Order MGB 057/04 where the MGB

“...rejected the argument of the DLA that the assessment is based on only one specific record of the AEUB.”



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In summary, the Complainants submitted that the attribute records are not the only record of the AEUB that can be used to prepare a linear assessment. Any records of the AEUB - including the graphical records - may be used to prepare an assessment.

### **Summary of Respondent's Position (Issue 1)**

The Respondent submitted that, in accordance with the legislative scheme for the assessment of linear property, the DLA has consistently utilized the attribute records of the AEUB. This results in fairness and equity in the preparation of linear property assessment.

Where the characteristics and specifications are prescribed by law to be those contained in the records of the AEUB as of October 31 of the assessment year, neither the DLA nor the MGB are entitled to consider the specifications and characteristics of the pipeline as contained outside those records.

The DLA consistently uses the characteristics and specifications as contained in the attribute files of the AEUB records. It does so for all pipeline properties in the province. In doing so, it fulfills its duty under section 293(2) of the Act to take into consideration assessments of similar properties in the same municipality in which the property that is being assessed is located. To assess some properties on the basis of information contained in the graphical records while assessing other properties on the basis of information contained in the attribute records would be inequitable and unfair.

The Respondent argued that it was the decision of the Pipeline Transition Committee (PTC), a body represented by stakeholders including municipalities, that in utilizing the AEUB records to prepare an assessment, the DLA should use the pipeline length recorded in the attribute records. The graphical records are then used for purposes of apportionment between municipalities. The Respondent pointed out that the Complainants do not dispute the decision of the DLA to rely upon the characteristics and specifications contained in the attribute records to prepare linear assessments. It also pointed out that the policy of using attribute records rather than graphical records for pipeline length is very reasonable, because the graphical record only provides a general representation of the pipeline route.

The Respondent conceded that information contained in the attribute records is sometimes inaccurate. Thus, Mr. Vandenberg suggested that using the pipeline length recorded in the attribute record results in a correct assessment in approximately 95% of the cases. However, sometimes errors in the attribute record will favour municipalities and other times they will favour owner/operators.

Such errors are a consequence of the legislation's deliberate choice to require the use of AEUB records. In short, the Act does not require the DLA to undertake an investigation to determine whether the correct pipe length is something other than the length recorded in the attribute record. It requires the DLA to apply the prescribed legislation fairly and equitably. By

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consistently using the attribute file length, the DLA fairly and equitably assessed all similar properties in the municipality and indeed the province.

### **Finding (Issue 1)**

The attribute record is not the only record of the AEUB to be used when preparing a linear property assessment.

### **Reasons (Issue 1)**

The first step in an analysis of whether or not only the attribute records of the AEUB should be used in preparing a linear property assessment is to examine the express provisions of the legislation. The key section is section 292 of the Act. This section clearly states that each assessment must reflect the records of the AEUB. "Records", being a plural form, suggests that more than one record of the AEUB can be utilized in preparing an assessment. More specifically, the express provision of the Act does not limit the DLA the use of the attribute record only. On a plain reading of the section, more than one AEUB record may be utilized in the preparation of a linear assessment. This is further acknowledged in the Guidelines where reference is also made to "the characteristics and specifications contained in the records of the AEUB.

By express legislative provision, therefore, all information contained in the AEUB records may be used in preparing an assessment. In their agreed statement of facts, the parties acknowledge that the graphical records are AEUB records (Agreed Fact # 2.). Consequently, the graphical records, as part of the AEUB records, may be used in the preparation of a linear assessment.

Although the sole use of the attribute file in preparing an assessment is a recommendation of the PTC, a policy advisory committee, this policy choice cannot be rigidly upheld in direct contrast to a clear legislative provision. While adherence to this policy may provide for certainty of process and administrative efficiency, however, when the effect of this strict obedience is to render a possibly incorrect assessment - and therefore a potentially unfair and inequitable assessment - the provisions of the Act, including section 292 (1) (b) (i) and (ii) take precedence by allowing the DLA to step beyond the attribute files to examine the complete record of the AEUB.

The MGB is cognizant of the immense task in assessing large volumes of pipe and the need to have an assessment system that is administratively simple and effective. However, without express provisions in the Act to limit the rights of taxpayers and tax recipients, the MGB is reluctant to accept that the Legislature made a deliberate choice to accept incorrect lengths on the theory that "it all averages out" as suggested by the Respondent. Even if they contemplated this for the original assessment, the MGB is not convinced such a choice extended to ban a right of complaint where the AEUB records reveal a difference.

**ISSUE 2. SHOULD AN INCONSISTENCY IN THE RECORDS OF THE AEUB LEAD TO A CORRECTION OF THE ASSESSMENT?**

**Summary of Complainants' Position (Issue 2)**

The Complainants submitted that by use of an incorrect inventory record, the valuation standards would not have been applied, and therefore fairness and equity cannot be achieved. The Complainants argued that it is the responsibility of the DLA to explore all of the AEUB records when there are concerns expressed on specific pipelines. This has been the process over the past number of years and was apparently discontinued because of the effort required to complete this task.

The Complainants further argued that the records of the AEUB could be challenged when proven to be incorrect or not up to date. When properties are under complaint, all and any records relative to the property may be challenged and any evidence brought forward for scrutiny. In the present circumstances, the attribute records cannot be correct because the “to” and “from” locations marked on their face do not correspond with their recorded pipeline length. Furthermore, Mr. Vandenberg's clear testimony following his audit was that the segment lengths marked on the AEUB attribute records are incorrect, whereas the graphical records are most likely correct.

In summary, the Complainants concluded that clear evidence has been presented - including that of Mr. Vandenberg – to show that the AEUB attribute record on which the assessment is based is incorrect. Accordingly, the assessment should be corrected in order to achieve fairness and equity.

**Summary of Respondent's Position (Issue 2)**

The Respondent argued that, consistent with the finding and reasons of the MGB in Board Order MGB 001/04, the question of whether or not an assessment should be corrected does not even arise until the Complainants discharge the onus of providing “sufficient” evidence that the assessment is incorrect.

The Respondent submitted that the MGB has determined the meaning of “sufficient” evidence in the context of the issues raised in the present complaints. It is clear that a mere discrepancy between the graphical and attribute records does not indicate that the attribute records is incorrect, or conversely, that the graphical data is more accurate. There is no duty on the DLA to resolve an ambiguity without sufficient evidence to justify further inquiry. The MGB was unequivocal in its finding that a mere divergence of the attribute and graphical does not constitute sufficient evidence. The Respondent pointed out that the evidence on which the Complainants rely is the fact of a discrepancy between the length of the pipe recorded in the AEUB's attribute and graphical records.

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The main argument of the Complainants is that the pipeline length recorded in the attribute record is incorrect for the pipelines under complaint because there is the apparent discrepancy within the attribute record itself. That is, the pipeline lengths recorded on the attribute record do not match the distance between the “to” and “from” locations representing the two ends of the lines. However, this evidence does not establish the true length of the pipeline. At most, it shows only an inconsistency within the AEUB records. Thus, it does not trigger a duty on behalf of the DLA to undertake further investigation.

At the hearing, Mr. Vandenberg gave the following reasons why there might be discrepancies between the length of the pipe recorded in the attribute record and that recorded in the graphical record.

- The records of the AEUB are live in that they are constantly being updated in real time. It is essential that any comparison of the AEUB data should be extracted from both records at the same time.
- A discrepancy between a “to” and “from” location and the recorded length in the attribute file or between the attribute file and the graphical record does not explain the reason for the discrepancy or that the length recorded in the attribute record is necessarily incorrect. It may be inconsistent because of a key punching error, or the “to” and “from” location may be incorrect, or the length of the graphical record may be incorrect.
- In order to investigate fully, the Complainants needed to provide the actual paper pipeline license. The Complainants had not done so.

As a result of MGB questions at the hearing, Mr. Vandenberg volunteered to look into the discrepancy in the AEUB records and determine which one was correct, if possible. The MGB then accepted this offer and adjourned the hearing to allow him to return with his findings. Mr. Vandenberg’s investigation confirmed that he could not tell just by looking at the records why the discrepancy existed or what the correct pipeline length should be. To determine the correct length, he had to go beyond the AEUB records by seeking input from the licensees. For example, the following companies were among those which responded by indicating the correct line-lengths.

<b>AEUB licence and line no.</b>	<b>Assessee</b>	<b>Municipality</b>	<b>Assessed length of <u>entire line</u> in km (per Complainants)</b>	<b>Revised length in km (as reported to AEUB by the Assessee)</b>
25242-18	Shell Canada	Mountain View County	2.40	9.55
7570-23	BP Canada	Mountain View County	0.25	1.34
6820-3	BP Canada	Mountain View County	1.15	8.97
5844-2	Rangeland Pipeline Co.	Mountain View County	8.23	13.24

Having received responses for a sample of the pipelines, Mr. Vandenberg concluded that the graphical records as presented by the Complainants were most likely correct. However, this

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conclusion could not have been reached independently of the records provided to him by the property owners. Moreover, the kind of investigation undertaken by Mr. Vandenberg is time-consuming and the DLA has neither the resources nor the obligation to undertake such action when confronted with the kind of inconclusive evidence actually presented by the Complainants.

In summary, the Respondent submitted that the Complainants had not provided the DLA with sufficient evidence to prove that the assessments were incorrect. Therefore, the assessments should not be altered.

### **Findings (Issue 2)**

An inconsistency in the data of the AEUB records is not sufficient on its own to lead to a correction of the assessment, but rather evidence must be provided.

For the subject properties, the correct pipe lengths are those listed in the graphical records of AEUB.

### **Reasons (Issue 2)**

The DLA has an obligation to stakeholders in the linear property assessment regime, including both taxpayers and municipalities. This obligation requires the DLA to apply the valuation standards in a fair and equitable manner, pursuant to section 293 (1)(a) of the Act. The valuation standards set out in the Regulation and Guidelines require the DLA to base its assessment of the subject pipelines on the characteristics and specifications within the AEUB records. In addition, section 292 requires that the linear property assessments reflect the characteristics and specifications of the linear property as contained in the records of the AEUB. The parties appear to disagree as to how known inconsistencies within the AEUB records affect the fair application of the standard expressed in the regulation and the standard directly referred to in section 292.

The DLA argues that its duty to apply the standard fairly is fulfilled by consistent application of the lengths reported in a single record of the AEUB, the attribute record. This position is not in dispute in cases where the DLA or any of the parties have no reason to suspect that the length recorded in the AEUB attribute record is wrong. A dispute only arises when the DLA is presented with evidence to show that the AEUB attribute records upon which it is basing its assessment are faulty, incorrect, or of doubtful reliability. At some point – as evidence mounts to shake the reliability of the AEUB attribute records or prove the correct length – consistent application of the length recorded in the AEUB attribute record takes on the appearance of blind application of the valuation standard. The position that blind application of the valuation standard equates to its fair application is difficult to maintain.

The DLA argues that, pursuant to Board Order MGB 001/04, the point at which the DLA may be required to correct the AEUB-record-based assessment does not occur until the municipality presents the DLA with proof that the attribute record length is incorrect and shows what the

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correct length should be. In contrast, the Complainants argue that proof of a significant discrepancy within the AEUB records is enough to trigger an obligation on behalf of the DLA to discover which records are correct.

In Board Order MGB 001/04, the MGB found that:

“A discrepancy between the graphical and attribute records in respect of pipe length does not in itself indicate that the data contained in the attribute record, which was used in preparing an assessment, is incorrect. Once a discrepancy is identified, the DLA must consider relevant evidence brought to its attention that would assist in determining what the correct length of pipe is for each of the 62 subject assessments.

In the present complaints, the Complainants brought forward very compelling evidence regarding the length of the pipe from owners/operators. This evidence resolved the conflict between the graphical and attribute record of the AEUB in favour of the graphical record. This evidence was not contested by the Respondent.

Further, in one subject property, the owner/operator licensee indicated that the pipe was 0.1 km longer than the length shown in the graphical record. Weight ought to be given to voluntary self-disclosure made by assessed parties, such as owner/operators, that incorrect data was used. It is relevant evidence as it tends to prove, through corroboration, the accuracy of the data contained in the graphical record.

However, the Complainants have not presented sufficient evidence to corroborate their claims that the DLA used incorrect pipe lengths in preparing an assessment on each of the remaining 48 properties under complaint. All they have offered is evidence that discrepancies exist between the data contained in the attribute and the graphical records. This alone is insufficient to oblige the DLA to investigate further and it is insufficient to cause the MGB to direct a change in the assessment.” (Reasons - page 22, Board Order MGB 001/04)

The MGB still agrees with its reasoning in Board Order MGB 001/04 and accepts that internal inconsistencies within the AEUB records do not automatically render an assessment incorrect. Neither do they necessarily trigger an obligation on behalf of the DLA to undertake further investigative steps.

However, unlike Board Order MGB 001/04, the evidence before the MGB in the present circumstances highlights the fact that something more than simple inconsistency between the attribute and graphical records is involved. Inspection of the attribute record for the subject properties alone reveals an internal inconsistency within the attribute record itself. For example,

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a mismatch between the “to” and “from” locations on the face of the record and the recorded pipe length. The question thus arises as to whether knowledge of this fact should have caused the DLA to take steps to ensure the accuracy of the pipe-length data it used to generate a fair and equitable assessment.

The answer to this question is not entirely straightforward. On the one hand, the MGB accepts the evidence of Mr. Vandenbeld that any number of errors could have resulted in an internal inconsistency within the attribute record, from a mistake in data entry to an incorrect “to” or “from” location. Thus, it cannot be assumed that internal inconsistency in the attribute record itself inevitably leads to the finding of an incorrect, unfair or inequitable assessment. On the other hand, the DLA has indicated that it trusts the attribute record as its primary data source for determining pipe length. Internal inconsistencies of the kind and scale noted by the Complainants in this primary data source should cause reasonable apprehension as to its reliability in the case of the subject properties, thus prompting further investigation to ensure an accurate, fair and equitable assessment. In this connection, the MGB notes that the inconsistencies proved by the Complainants were not of an isolated nature, but amounted to a sizeable difference in assessment on a significant number of pipelines.

Fortunately, the matter need not be decided on this ground, because proof as to which AEUB records accurately reflect pipeline length for the subject properties surfaced during the course of the hearing through testimony from Mr. Vandenbeld. Based on responses from a sample of property owners, Mr. Vandenbeld concluded that the graphical records (or alternatively the lengths calculated by reference to the “to” and “from” locations on the attribute record) and not the lengths recorded on the attribute records most likely represent the true length of all of the subject pipelines. The MGB agrees. Furthermore, the MGB considers it beyond question that a fair and equitable application of the standard would prefer using pipeline lengths from AEUB sources that are known to be accurate in particular cases to ones that are known to be inaccurate. In making this statement, the MGB is aware that there is no requirement that the content of the Guidelines be fair; nevertheless the Act does require that the standards they set out be applied fairly and equitably.

In reaching its conclusion as to whether a fair and equitable application of the regulated standard requires correction of inaccuracies caused by use of certain AEUB records, the MGB considered the ability of the municipal applicants themselves to correct the AEUB records. The MGB notes that at least two factors put municipalities at a disadvantage compared to property owners in the upkeep of accurate AEUB records. First, the property owner/operator is in a better position than the municipality to monitor and prove the actual or correct status of its own property in relation to the corresponding AEUB records before assessments are prepared. Second, the property owner (and not the municipality) has the responsibility to report changes in property characteristics to the AEUB. Thus, where a property owner has failed to inform the AEUB of errors in the records, the DLA may be justified in simply requesting the property owner to apply to the AEUB to correct the records, so that the following year’s assessment will be based on accurate figures. In contrast, where a municipality requests the AEUB to change its records the

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process is less straightforward, because the AEUB must initiate an investigation that may not be of high priority. While the MGB accepts Mr. Vandenberg's testimony that processes are now in place to respond to requests from AEUB record users such as the Complainants or their agent, it appears that property owners still have relatively more control over the accuracy of the relevant AEUB records than municipalities do.

To conclude, the MGB believes that under the present circumstances a fair and equitable application of the standards involves correcting the assessments under complaint in light of the AEUB sources now known to be most likely accurate. As explained earlier in this Board Order, these sources include the graphical records of the AEUB or, alternatively, the lengths calculated by the Complainants using the "to" and "from" locations on the attribute record. The MGB is satisfied that sufficient evidence has been submitted to prove the assessments warrant correction, and that the assessments of the subject properties should be based on the graphical lengths presented by the Complainants and accepted by Mr. Vandenberg as most likely to be correct.

### **ISSUE 3. SHOULD THE MGB EXERCISE ITS DISCRETION TO COMPEL ADDITIONAL INFORMATION UNDER SECTION 497 OF THE ACT?**

#### **Summary of Complainants' Position (Issue 3)**

The Complainants submitted that the MGB should use its power under section 497 of the Act to compel witnesses from the owners/operators to bring forward the information required to determine the correct length of the pipe segments. This would resolve any ambiguity and point to the correct record of the AEUB to be used in preparing the assessment.

#### **Summary of Respondent's Position (Issue 3)**

The Respondent submitted that the section 497 application should be decided at the end of the merit hearing.

#### **Finding (Issue 3)**

There is no need to invoke section 497 to compel additional information.

#### **Reasons (Issue 3)**

Given the above decision and reasons, there is no need to compel the subject property licensees to appear before the MGB. The evidence that the graphical records are most likely the correct records for the subject properties has been accepted by the MGB and, therefore, there is no need to compel further information because additional information is not required to decide the issues before the MGB.



## BOARD ORDER: MGB 091/05

### DECISION

The complaints in respect to the assessments are allowed, and the DLA is instructed to recalculate the assessments in accordance with the following pipeline segment lengths.

LPAU-ID	AEUB licence and line no.	Municipality	Assessee	Assessed length in km	Revised length in km (as reported or accepted by Mr. Vandenberg as most accurate)
1056703	713-16	Wheatland County	Nova Gas Transmission Ltd.	12.45	36.53
1190768	25242-18	Mountain View County	Shell Canada	2.20	8.57
1082066	7570-23	Mountain View County	BP Energy Canada	0.25	1.34
1077827	6820-3	Mountain View County	BP Energy Canada	1.09	8.48
1072509	5844-2	Mountain View County	Rangeland Pipeline Company Limited	4.99	7.41
1118408	13009-27	Mountain View County	Alberta Ethane Development Company Ltd.	52.95	59.86
1069476	5058-49	Mountain View County	Nova Gas Transmission Ltd.	2.02	18.81
1069475	5058-47	Mountain View County	Nova Gas Transmission Ltd.	1.35	11.61
1069472	5058-45	Mountain View County	Nova Gas Transmission Ltd.	0.12	9.56
1061651	2798-30	Mountain View County	Nova Gas Transmission Ltd.	7.22	8.55
1061659	2798-40	Mountain View County	Nova Gas Transmission Ltd.	27.52	38.73
1077920	6838-23	Mountain View County	Nova Gas Transmission Ltd.	0.13	1.57
1083529	7803-26	Mountain View County	Nova Gas Transmission Ltd.	7.40	8.58
1083533	7803-34	Mountain View County	Nova Gas Transmission Ltd.	2.10	4.67
1083542	7803-53	Mountain View County	Nova Gas Transmission Ltd.	1.90	2.98
1059518	1985-11	Kneehill County	Nova Gas Transmission Ltd.	6.26	11.01
1064188	3469-29	Kneehill County	Rangeland Pipeline Company Limited	1.34	13.31
1092104	8936-25	Kneehill County	Murphy Canada Exploration	1.34	4.27
1076301	6535-3	Kneehill County	Murphy Canada Exploration	0.06	6.90
2125397	13862-8	Kneehill County	Encana Corporation	0.02	9.93
1123605	14134-7	MD of Northern Lights	Nova Gas Transmission Ltd.	2.06	10.12
1115986	12467-3	MD of Northern Lights	Nova Gas Transmission Ltd.	0.37	2.52
1110436	11437-42	MD of Northern Lights	Encana Corporation	2.01	5.38
1110430	11437-36	MD of Northern Lights	Encana Corporation	0.77	2.31

## **BOARD ORDER: MGB 091/05**

The DLA shall provide the recalculated assessments to the MGB within 14 days of the date of this Board Order. Once the DLA has provided the recalculated assessments satisfactory to the MGB, a further order will be issued to approve them.

It is so ordered.

### **COSTS**

#### **Complainants' Position (Costs)**

The Complainants requested costs in the amount of \$5,600 (56 hours at \$100 per hour) incurred because of an adjournment of proceedings. The Complainants noted this hearing was initially scheduled for September 2004; in fact, as of September 9 and 10, 2004 an MGB panel had heard both parties' submissions, except for closing arguments and the Complainants' rebuttal. The Respondent then requested an adjournment, which was accepted by the MGB. Following the adjournment, the Respondent introduced two more witnesses and the hearing was rescheduled for January 31, 2005. This course of events added to the Complainants' workload and justifies their request for costs.

#### **Respondent's Position (Costs)**

The Respondent did not cause the adjournment; rather, the original MGB panel suggested the DLA might wish to adjourn for the day to consider presenting further witness who would be able to answer a line of questioning raised by the panel. The DLA subsequently requested a rehearing upon which the original MGB panel recused itself. It would be unfair for the MGB to penalize the DLA for making an application that was accepted by the MGB.

#### **Decision (Costs)**

No costs to either party.

It is so ordered.

#### **Reasons (Costs)**

As explained in DL 138/04, the Respondent made an early rehearing request on October 15, 2005, after the hearing was adjourned on September 10. The MGB panel then stepped down, which resulted in fresh submissions and a new hearing beginning January 31, 2005.

According to the MGB procedure guide, costs may be granted when a party acts contrary to an agreed or Board instructed process, causes unreasonable delays, or engages in other similar behaviour. In the current circumstances, the MGB notes that the delay in proceedings was pursuant to a Board ordered process (DL 138/04); accordingly, costs would not be appropriate.

## **BOARD ORDER: MGB 091/05**

### **SUMMARY**

The Act requires the DLA to prepare linear assessments by applying the standards set out in the subordinate legislation fairly and equitably. It also provides mechanisms for the correction of errors on the roll. The subordinate legislation requires the DLA to apply a prescribed formula to the characteristics and specifications reported in the AEUB records as of October 31.

The DLA assessed the subject pipelines using a prescribed formula in conjunction with the pipeline length reported in the “attribute record” maintained by the AEUB. However, the Complainants (who unlike property owners/operators are not charged with reporting discrepancies in the AEUB records) provided evidence that the attribute record length was inconsistent with other AEUB records, including the “graphical record” and the “to” and “from” locations reported on the attribute record along with pipeline length. Furthermore, the Respondent’s witness, a senior AEUB official, undertook to investigate the discrepancies and found that the values derived from the other AEUB records were most likely correct.

The MGB decided that under these circumstances, a fair and equitable application of the standards entails adjusting the assessment based on the length of the subject pipelines reflected in the AEUB records that are most likely correct.

Dated at the City of Edmonton, in the Province of Alberta, this 8th day in September 2005.

**MUNICIPAL GOVERNMENT BOARD**

(SGD) R. Scotnicki, Member

**BOARD ORDER: MGB 091/05**

**APPENDIX "A"**

APPEARANCES

<b>NAME</b>	<b>CAPACITY</b>
R. Kozack	LandLink Geographics Inc., for the Complainants
B. Giffen	LandLink Geographics Inc., for the Complainants
C. Plante	Bishop & McKenzie LLP, Counsel for the Respondent
M. Vandenberg	AEUB, Witness for the Respondent
C. Uttley	Alberta Municipal Affairs, Witness for the Respondent

**APPENDIX "B"**

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

<b>NO.</b>	<b>ITEM</b>
1C	Written Submissions of the Complainants
2R	Written Submissions of the Designated Linear Assessor
3C	Rebuttal to the Respondent's Submission and Additional Written Submission
4R	Additional Written Submissions of the Respondent DLA
5R	Agreed Statement of Facts
6R	Appendix of Authorities
7R	Will Say Statement for the Respondent
8R	Fax to BP Canada dated March 22, 2004
9R	Position of the DLA (2004 Tax Year)
10R	Letter from Ms. Plante of Bishop & McKenzie LLP to Mr. d'Alquen of the MGB dated May 17, 2005
11R	Summary of Findings
12R	Spreadsheet with EUB information

**APPENDIX "C"**

DOCUMENTS RECEIVED SUBSEQUENT TO THE HEARING AND CONSIDERED BY THE MGB:

<b>NO.</b>	<b>ITEM</b>
13C	Closing Arguments and Rebuttal
14R	Summation and Closing Argument of the DLA

**BOARD ORDER: MGB 091/05**

**APPENDIX “D”**

**LIST OF PROPERTY COMPLAINTS SUBJECT TO THE HEARING**

<b>LPAU-ID</b>	<b>AEUB licence and line no.</b>	<b>Municipality</b>	<b>Assessee</b>	<b>Assessed length in km</b>
1056703	713-16	Wheatland County	Nova Gas Transmission Ltd.	12.45
1190768	25242-18	Mountain View County	Shell Canada	2.20
1082066	7570-23	Mountain View County	BP Energy Canada	0.25
1077827	6820-3	Mountain View County	BP Energy Canada	1.09
1072509	5844-2	Mountain View County	Rangeland Pipeline Company Limited	4.99
1118408	13009-27	Mountain View County	Alberta Ethane Development Company Ltd.	52.95
1069476	5058-49	Mountain View County	Nova Gas Transmission Ltd.	2.02
1069475	5058-47	Mountain View County	Nova Gas Transmission Ltd.	1.35
1069472	5058-45	Mountain View County	Nova Gas Transmission Ltd.	0.12
1061651	2798-30	Mountain View County	Nova Gas Transmission Ltd.	7.22
1061659	2798-40	Mountain View County	Nova Gas Transmission Ltd.	27.52
1077920	6838-23	Mountain View County	Nova Gas Transmission Ltd.	0.13
1083529	7803-26	Mountain View County	Nova Gas Transmission Ltd.	7.40
1083533	7803-34	Mountain View County	Nova Gas Transmission Ltd.	2.10
1083542	7803-53	Mountain View County	Nova Gas Transmission Ltd.	1.90
1059518	1985-11	Kneehill County	Nova Gas Transmission Ltd.	6.26
1064188	3469-29	Kneehill County	Rangeland Pipeline Company Limited	1.34
1092104	8936-25	Kneehill County	Murphy Canada Exploration	1.34
1076301	6535-3	Kneehill County	Murphy Canada Exploration	0.06
2125397	13862-8	Kneehill County	Encana Corporation	0.02
1123605	14134-7	M.D. of Northern Lights	Nova Gas Transmission Ltd.	2.06
1115986	12467-3	M.D. of Northern Lights	Nova Gas Transmission Ltd.	0.37
1110436	11437-42	M.D. of Northern Lights	Encana Corporation	2.01
1110430	11437-36	M.D. of Northern Lights	Encana Corporation	0.77

**BOARD ORDER: MGB 091/05**

**APPENDIX “E”**

**LIST OF COMPLAINTS WITHDRAWN AT THE HEARING**

The complaints regarding the following properties were withdrawn by the Complainants at the outset of the hearing.

<b>LPAU-ID</b>	<b>AEUB licence and line no.</b>	<b>Municipality</b>	<b>Assessee</b>
1110427	11437-33	M.D. of Northern Lights	Encana Corporation
1110437	11437-43	M.D. of Northern Lights	Encana Corporation
1093407	9031-77	Kneehill County	Marathon Canada
1093411	9031-92	Kneehill County	Marathon Canada