

**BOARD ORDER: MGB 115/05**

**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 A COMPLAINT** respecting linear property assessments for the 2004 tax year filed by BP Canada Energy Company.

**BETWEEN:**

BP Canada Energy Company, as represented by Wilson Laycraft LLP – Complainant

- a n d -

The Designated Linear Assessor for the Province of Alberta, as represented by Reynolds Mirth Richards and Farmer LLP - Respondent

**BEFORE:**

Members:

C. Bethune, Presiding Officer  
B. Ardiel, Member  
A. Savage, Member

Secretariat:

D. Woolsey

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on March 21, 2005. Counsel for Complainant chose not to attend the hearing.

This is a complaint made by BP Canada Energy Company (BP) to the Municipal Government Board (MGB) respecting linear property assessments for the 2003 assessment year (2004 tax year) prepared by the Designated Linear Assessor (DLA) and entered in the assessment roll of the Regional Municipality of Wood Buffalo as summarized in Appendix “C”.

**OVERVIEW**

At issue in this complaint is the fairness and equity of the assessment of 75 gas well properties and 81 gas pipeline properties that were affected by one or more Shut-In Orders of the Alberta Energy and Utilities Board (AEUB).

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The Complainant submitted that the assessments are inequitable and should either be reduced to zero, receive additional depreciation or referred to the Minister of Alberta Municipal Affairs (Minister) for inspection. The Complainant submitted that the linear assessor ought to have considered the Shut-In Order as part of the AEUB records. The Complainant also argued that the Shut-In Orders were not captured by the limitations set out in the Minister's Guidelines.

The Respondent submitted that the assessments should be confirmed because they were prepared in strict accordance with legislated requirements for assessments and reflect the characteristics and specifications of the subject properties as contained in the AEUB records. As such, the Respondent contends that the complaint amounts to a collateral attack on the assessment legislation.

### **BACKGROUND**

#### **Subject Properties**

The subject properties are 75 gas well properties and 81 gas pipeline properties in the Regional Municipality of Wood Buffalo, licensed to the Complainant by the AEUB. For each of the pipeline properties, the "from" location indicated on the AEUB license is one of the subject well properties.

A single surface entry point of a gas well can have one or more specific drilling operations or "events" associated with it, each yielding unique gas production data. Multiple-event wells can result from directional drilling or drilling to different depths. Forty of the subject well properties are multi-event wells.

In AEUB records, each event is uniquely identified by an alpha-numeric code called a "Unique Well Identifier" or "UWI." A simplified version of the UWI is the 13-digit "well-ID". For instance, in the well-ID "0010090740640", the first two digits indicate that the well has location exception code 00. The next string of ten digits indicates that the bottom drill hole is located in legal subdivision 10, section 09, township 074, range 06 west of the 4<sup>th</sup> meridian. The last digit "0" indicates that this is the first event of the well. Well-IDs for different events of the same well will only differ in the last digit. It is important to note, however, that all events of a particular well are subject to the same AEUB license number and assessed under a single Linear Property Assessment Unit Identifier (LPAU-ID).

#### **AEUB Shut-In Orders**

In 2003 and 2004, the AEUB issued a series of Shut-In Orders that had the effect of reducing the Complainant's gas production in the Kirby-Leismer area by 30%.

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On March 18, 2003, the AEUB issued decision 2003-023. It found that gas production from certain wells in the Wabiskaw-McMurray formation in the Chard-Leismer area jeopardized the long-term recoverability of bitumen in pressure communication with the recovered gas. Consequently, it ordered that certain wells be shut-in, effective May 1, 2003.

On July 22, 2003, the AEUB issued Interim Shut-In Order 03-001, pursuant to AEUB decision 2003-023. This Order required the shut-in of gas production from 98 well-IDs in the Wabiskaw-McMurray formation licensed to the Complainant, effective September 1, 2003.

On June 8, 2004, the AEUB issued Interim Shut-In Order 04-001. This Order rescinded Order 03-001, effective July 1, 2004 and ordered the Complainant to shut-in or cause to remain shut-in (as the case may be) gas production from 170 well-IDs in the Wabiskaw-McMurray formation licensed to the Complainant, effective July 1, 2004.

On June 8, 2004, the AEUB also issued Interim Shut-In Order 04-002. This Order likewise rescinded Order 03-001, effective July 1, 2004, and ordered the Complainant to shut-in or cause to remain shut-in (as the case may be) gas production from 29 well-IDs licensed to the Complainant, effective July 1, 2004.

Eighteen of the subject wells were affected only by Shut-In Order 03-001. Two of the subject wells were affected only by Shut-In Order 04-001. Eighteen of the subject wells were affected by both Shut-In Orders 03-001 and 04-001.

### **Assessment of Linear Pipeline Property**

Ms. Uttley, Operations Manager and Appeals Coordinator of the Linear Property Assessment Unit (LPAU), described the process for assessing well and pipeline properties based on AEUB records. In regard to wells, section 12.010 of the *Oil and Gas Conservation Regulations* requires a licensee to self-report the daily operations of wells to the AEUB. In practice, the licensee may submit or amend the information at anytime via the world wide web. On a monthly basis, the AEUB disseminates the information to the LPAU in the form of a general well file and a production file. The general well file discloses ownership, location and classification information for the well. The production file discloses the volumetric measurements of fluid production as self-reported by the licensee. Using this information, each well event is assigned a status code comprised of four two-digit components reflecting the well fluid (e.g. gas), mode (e.g. suspended, flowing), type (e.g. production, storage) and structure (e.g. commingled). This code and the production characteristics of the event during the 12 months prior to October 31 of the assessment year determine the well status description in Table 4.5 of the 2003 Alberta Linear Property Minister's Guidelines (Minister's Guidelines). The well status descriptor determines the well event's assessment classification code (ACC) in either Table 4.7 or 4.8 (as the case may be) of the Minister's Guidelines. Once the ACC has been determined, the appropriate Schedule A, B, C and D factors are determined in Table 4.9 of the Minister's Guidelines. The assessed

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value of the well event is the product of the Schedule A, B, C and D factors. The Schedule A factor determines the base cost; the Schedule B factor is an assessment year modifier of 1.200; the Schedule C factor provides a standardized depreciation of 0.750; and the Schedule D factor determines additional depreciation for wells based on their total production in the 12 months prior to October 31 of the assessment year, as set out in Tables 4.10 to 4.13. The assessed value of a well under a single LPAU-ID is the sum of the assessment for each of its events.

The assessment preparation process for pipelines is similar, except that the licensee must submit application and amendment information in hard copy to the AEUB. The AEUB transposes this information into a general attribute file and a graphical file. On a monthly basis, the AEUB disseminates copies of these files to the LPAU. The material, size, and maximum operating pressure of the pipeline as stated in the AEUB records determine the ACC for the pipeline in Table 4.2 of the Minister's Guidelines. The pipe status, facility code and production characteristics of attached wells determine the Schedule D factor in Table 4.4. Again, the assessed value of the pipeline is the product of the Schedule A, B, C and D factors.

The Respondent applied a Schedule D factor of unity to all the subject properties for the 2003 assessment year, thereby recognizing no additional depreciation.

### **ISSUES**

In order to decide this matter the MGB must decide the following specific issues.

1. Should the assessment of the subject properties be reduced to zero because of the AEUB Shut-In Orders?
2. Should the assessment of the subject properties recognize additional depreciation because of the AEUB Shut-In Orders?
3. In the alternative, should the matter be returned to the Minister, pursuant to section 516 of the Act, if an inequity exists but no remedy is provided?

### **LEGISLATION**

In order to decide this matter, the MGB examined the following relevant sections of the Act, associated Assessment Regulations and relevant Oil and Gas Conservation Regulations and Guides.

#### ***Municipal Government Act (Act)***

For the purposes of Part 9 to 12 of the Act, sub-paragraph 284(1)(k)(iii) of the Act defines pipeline linear property. In particular, part (A) includes pipe used to transport gas and part (D) includes well head installation used to obtain gas.

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

(k) *"linear property" means*

(iii) *pipelines, including*

- (A) *any continuous string of pipe, including loops, by-passes, cleanouts, distribution meters, distribution regulators, remote telemetry units, valves, fittings and improvements used for the protection of pipelines intended for or used in gathering, distributing or transporting gas, oil, coal, salt, brine, wood or any combination, product or by-product of any of them, whether the string of pipe is used or not,*
- (B) *any pipe for the conveyance or disposal of water, steam, salt water, glycol, gas or any other substance intended for or used in the production of gas or oil, or both,*
- (C) *any pipe in a well intended for or used in*
  - (I) *obtaining gas or oil, or both, or any other mineral,*
  - (II) *injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,*
  - (III) *supplying water for injection to an underground formation,*
  - or*
  - (IV) *monitoring or observing performance of a pool, aquifer or an oil sands deposit,*
- (D) *well head installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph (C) or for the protection of the well head installations,*
- (E) *the legal interest in the land that forms the site of wells used for any of the purposes described in paragraph (C) if it is by way of a lease, licence or permit from the Crown, and*
- (E.1) *the legal interest in any land other than that referred to in paragraph (E) that forms the site of wells used for any of the purposes described in paragraph (C), if the municipality in which the land is located has prepared assessments in accordance with this Part that are to be used for the purpose of taxation in 1996 or a subsequent year,*  
*but not including*
- (F) *the inlet valve or outlet valve or any installations, materials, devices, fittings, apparatus, appliances, machinery or equipment between those valves in*
  - (I) *any processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facilities, or*
  - (II) *a regulating or metering station,*  
*or*

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(G) *land or buildings;*

Collectively, paragraphs 488(1)(a), 492(1)(a), 492(1)(c) and 499(1)(b) confer jurisdiction of the MGB to hear the present complaint with respect to the assessment of linear property.

*488(1) The Board has jurisdiction*

*(a) to hear complaints about assessments 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;*

*(c) an assessment;*

The Act also prescribes the decision making power of the MGB in regards to this complaint. Paragraph 499(1)(b) of the Act authorizes the MGB to change an assessment of linear property.

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

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

In addition, section 516 of the Act authorizes the MGB to refer unfair and inequitable assessments to the Minister for inspection pursuant to section 571 or quashing pursuant to section 324. For the brevity of this Order, sections 571 and 324 are not reproduced.

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

Section 292 of the Act is of particular importance to deciding this complaint. Subsection (1) confers responsibility on the designated linear assessor (DLA) for preparing assessments for linear property. Subsection (2) stipulates that the assessment is to reflect regulated valuation standards and the specifications of the property on October 31 of the year prior to the tax year, as contained in the AEUB records or a requested report.

*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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Section 293 of the Act provides that assessments must be prepared in a fair and equitable manner according to the regulated procedures. In the absence of regulated procedures, the assessment must have regard for assessments of similar property in the same municipality.

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

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

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

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

### ***Matters Relating to Assessment and Taxation Regulation, Alta. Reg. 289/99 (the Assessment Regulation)***

Pursuant to section 292(1)(a) of the Act, section 6 of the Assessment Regulations provides that the valuation standard for linear property is set out in the Alberta Linear Property Assessment Minister's 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 (being Appendix II of Consolidation of 2003 Minister's Guidelines Regarding the Assessment of Farm Land; Linear Property; Machinery and Equipment; Railway) (the Minister's Guidelines)**

Pursuant to section 6 of the Assessment Regulations, the Minister has set out valuation standards for the assessment of linear property in the Minister's Guidelines. In particular, section 4.000 provides for the assessment of well and pipeline properties. The following considers the treatment of well properties and then the treatment of pipeline properties in reference to selected sections of the Minister's Guidelines.

#### Well Properties

Section 4.002(c) refers to well properties licensed and recorded by the AEUB.

Section 4.003(c) outlines the characteristics and specifications contained in AEUB records used to determine the well Assessment Classification Code (ACC).

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**4.003 CHARACTERISTICS AND SPECIFICATIONS USED TO DETERMINE THE ACC OF LINEAR PROPERTY PIPELINES**

(c) Linear property described in 4.002(c)

The ACC for linear property described in 4.002(c) is determined based on the combination of the following characteristics and specifications:

pool code,  
well status type,  
well status mode,  
well status structure,  
monthly oil (includes bitumen),  
monthly gas,  
monthly condensate volumes,  
as contained in the records of the AEUB.

Section 4.005 and Table 4.5 describe the process for determining the well status descriptor, a textual descriptor (e.g. Crude Oil Flowing) used to determine the ACC. For the brevity of this Order, only the first row of Table 4.5 is reproduced.

**4.005 PROCESS FOR DETERMINING THE WELL STATUS DESCRIPTION OF LINEAR PROPERTY DESCRIBED IN 4.002(C)**

The process for determining well status description for each well status identified for linear property described in 4.002(c) is as follows:

- (1) Locate each well status in column 1 of Table 4.5.
- (2) Determine the sum of oil and condensate production in the 12 months prior to October 31 of the assessment year. If production is greater than zero (0), then the well status description is found in column 2 of Table 4.5 and proceed to 4.005(5). If production is equal to zero (0), then proceed to 4.005(3).
- (3) Determine the total gas production in the 12 months prior to October 31 of the assessment year. If the production is greater than zero (0), then the well status description is found in column 3 of Table 4.5 and proceed to 4.005(5). If the production is equal to zero (0), then proceed to 4.005(4).
- (4) For all remaining linear property described in 4.002(c) the well status description is found in column 4 of Table 4.5.
- (5) For “Gas” and “Drilled and Cased” well status descriptions, if the first four characters of pool code associated with the well status, as contained in the records of the AEUB, are 0158, then the well status description is found in Table 4.6.

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TABLE 4.5 DETERMINING WELL STATUS DESCRIPTIONS FOR LINEAR PROPERTY DESCRIBED IN 4.002(C)

**Column 1:** Well Status is determined by combining well status type, well status mode, well status fluid and well status structure as contained in the records of the AEUB.

**Column 2:** provides the well status description where the sum of oil and condensate production in the 12 months prior to October 31 of the assessment year is greater than 0.

**Column 3:** provides the well status description where the sum of oil and condensate production is equal to 0 in the 12 months prior to October 31 of the assessment year and gas production in the 12 months prior to October 31 of the assessment year is greater than 0.

**Column 4:** provides the well status description where the sum of oil and condensate production and gas production in the 12 months prior to October 31 of the assessment year is equal to 0

Column 1 Well Status	Column 2 Wells status description	Column 3 Well status description	Column 4 Well status description
01090000	Crude Oil Flowing	Gas	Crude Oil Flowing
...	...	...	...

Section 4.010(b) describes the characteristics used to determine additional (Schedule D) depreciation.

**4.010 CHARACTERISTICS AND SPECIFICATIONS USED FOR DETERMINING ADDITIONAL DEPRECIATION (SCHEDULE D) FOR LINEAR PROPERTY PIPELINES**

(b) For linear property described in 4.002(c) the following specifications and characteristics:

- (i) Monthly oil production volume;
- (ii) Monthly gas production volume;
- (iii) Monthly condensate volume; and
- (iv) Monthly injection hours

as of October 31 of the assessment year and as contained in the records of the AEUB are used to determine the schedule D factor, if applicable.

Section 4.011(b) and Table 4.9 describe the process for determining the additional (Schedule D) depreciation. Each ACC in Table 4.9 references one of Tables 4.10 through 4.13 to determine the

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Schedule D factor. For the brevity of this order, only the first row of Table 4.9 and Table 4.10 is reproduced. (The “n\*” parameter in Table 4.9 is a measure of the well depth.)

**4.011 PROCESS FOR DETERMINING ADDITIONAL DEPRECIATION (SCHEDULE D) FOR LINEAR PROPERTY PIPELINES**

(b) For linear property described in 4.002(c):

- (1) Calculate the total production for the linear property, including all linear property well statuses, for the 12 months prior to October 31 of the assessment year using the formula:

$$\text{Total production} = \text{Oil production (m}^3\text{)} + \text{Condensate production (m}^3\text{)} + (\text{Gas production (Tm}^3\text{)} \div 1.0367)$$

\*\*Oil, condensate and gas production are as contained in the records of the AEB. No further conversion is required.

- (2) Calculate the total injection hours for the linear property, including all linear property well statuses, for the 12 months prior to October 31 of the assessment year.
- (3) Refer to Table 4.9 to determine the Table to be used to find Schedule D depreciation for the ACC determined in subsection 4.008.

**TABLE 4.9 CALCULATION PROCESS FOR LINEAR PROPERTY DESCRIBED IN 4.002(C)**

The process for determining n\* in Table 4.9 is described in subsection 4.009.

For ACCs WL10, WL20, WL30, WL40, WL50, WL80, WL90, WL100, WL110, WL120, if (n\* - 304 ) is less than zero (0) then (n\*-304) equals zero (0).

ACC	ACC Description	Schedule			
		A	B	C	D
WL10	Crude Oil flow well where the license has one unique well identifier	$41937+(n^*-304) \times 74.80$	1.200	0.750	Table 4.10
...	...	...	...	...	...

**TABLE 4.10 SCHEDULE D FACTORS FOR ACCS WL10, WL20, WL30, WL50, WL80, WL90, WL100**

The process for calculating total well production is defined in 4.011(b)

Code	Total Production	Schedule D Factor
1A	Greater than 477	1.000
1B	Greater than 397 and less than or equal to 477	0.860
1C	Greater than 318 and less than or equal to 397	0.720
1D	Greater than 238 and less than or equal to 318	0.570

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Code	Total Production	Schedule D Factor
1E	Greater than 159 and less than or equal to 238	0.430
1F	Greater than 79 and less than or equal to 159	0.290
1G	Greater than 0 and less than or equal to 79	0.150
1H	0	0.100

Finally, section 4.014 describes the calculation of assessments as the product of the Schedule A, B, C and D factors. Subsections 4.014 (e) and (f) are of particular importance to this complaint.

### 4.014 PROCESS FOR CALCULATING THE ASSESSMENT OF LINEAR PROPERTY DESCRIBED IN 4.002(C)

The assessment of linear property pipelines described in 4.002(c) is calculated using the following process:

- (e) Determine the Schedule D factor using the prescribed values in Table 4.9 as prescribed. The depreciation factors prescribed in Schedule D for linear property are exhaustive. No additional depreciation can be applied by the assessor.
- (f) Calculate the assessment of linear property pipelines by multiplying together the values of Schedule A, Schedule B, Schedule C and Schedule D. The final assessment is rounded to the nearest \$10. The minimum assessment for linear property is \$10.

### Pipeline Properties

Section 4.002(a) references pipeline properties licensed and recorded by the AEUB. Section 4.003(a) outlines the characteristics and specifications used to determine the ACC.

### 4.002 CHARACTERISTICS AND SPECIFICATIONS

- (a) 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.

### 4.003 CHARACTERISTICS AND SPECIFICATIONS USED TO DETERMINE THE ACC OF LINEAR PROPERTY PIPELINES

- (a) Linear property described in 4.002(a)  
The ACC for linear property described in 4.002(a) is determined based on the combination of the following characteristics and specifications:

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- (i) pipeline material (see Table 4.1),
- (ii) outside diameter, and
- (iii) the maximum operating pressure, when the material is steel, as contained in the records of the AEUB.

Section 4.010(a) indicates the characteristics used to determine additional (Schedule D) depreciation.

**4.010 CHARACTERISTICS AND SPECIFICATIONS USED FOR DETERMINING ADDITIONAL DEPRECIATION (SCHEDULE D) FOR LINEAR PROPERTY PIPELINES**

- (a) For linear property described in 4.002(a) the following specifications and characteristics:
  - (i) Pipe Status,
  - (ii) From Facility Code,
  - (iii) From location,as of October 31 of the assessment year and as contained in the records of the AEUB are used to determine the schedule D factor, if applicable.

Section 4.011(a) and Table 4.4 describe the process for determining the additional (Schedule D) depreciation.

**4.011 PROCESS FOR DETERMINING ADDITIONAL DEPRECIATION (SCHEDULE D) FOR LINEAR PROPERTY PIPELINES**

- (a) For linear property described in 4.002(a) the specifications and characteristics identified in 4.010(a) are used as described in Table 4.4.

**TABLE 4.4 SCHEDULE D FACTORS FOR LINEAR PROPERTY DESCRIBED IN 4.002(A)**

Depreciation factors in this table are not cumulative. If more than one depreciation factor from this table is applicable, the assessor shall only apply the lowest factor. In other words, the assessor will apply the factor that allows the greatest amount of depreciation.

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<b>Code</b>	<b>Description</b>	<b>Schedule D Factor</b>
<b>W</b>	Pipeline that meets <u>all</u> of the following criteria: (1) The pipeline has a pipe status of operational as contained in the records of the AEUB; (2) The pipeline has a "from" facility code of WE as contained in the records of the AEUB; and (3) The pipeline is located in the same LSD, section, township, range and meridian as a well surface hole whose total production is equal to zero (0) as contained in the records of the AEUB for the 12 months prior to October 31 of the assessment year.	0.100
<b>D</b>	Pipeline that has a discontinued status as contained in the records of the AEUB	0.100
<b>CFBS</b>	Pipeline with an operational status and a diameter greater than 246.2 mm as contained in the records of the AEUB that is within the boundaries of Canadian Forces Base Suffield as found on Plan 9411999, Block A only.	0.950

Finally, section 4.012 indicates that the assessment of a pipeline is calculated as the product of the Schedule A, B, C and D factors. Subsections 4.012 (e) and (f) are of particular importance to this complaint.

**4.012 PROCESS FOR CALCULATING THE ASSESSMENT OF LINEAR PROPERTY DESCRIBED IN 4.002(A)**

The assessment of linear property pipelines described in 4.002(a) is calculated using the following process:

- (e) Determine the Schedule D factors using the prescribed values in Table 4.3 and Table 4.4. The depreciation factors prescribed in Schedule D for linear property are exhaustive. No additional depreciation can be applied by the assessor.
- (f) Calculate the assessment of linear property by multiplying together the values of Schedule A, Schedule B, Schedule C and Schedule D. The final assessment is rounded to the nearest \$10. The minimum assessment for linear property is \$10.

**AEUB Guide 56: Energy Development Applications and Schedules, October 2003 (Guide 56)**

In Guide 56, the AEUB presents requirements and procedures for filing a licence application to construct or operate any petroleum industry energy development that includes facilities, pipelines or wells. In addition to being a procedural manual, Guide 56 is incorporated by reference into the Oil and Gas Conservation Regulations.

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Appendix 3 Definitions for the Purposes of Guide 56 defines “Abandonment” and “Suspension”.

- Abandonment      The permanent dismantlement of a well, pipeline, or a facility in the manner prescribed by the regulations; includes any measures required to ensure that the well, pipeline, or facility is left in a permanently safe and secure condition.
- Suspension        The temporary cessation of operations at a well, pipeline, or facility in the manner prescribed by the regulations or directed by the EUB; includes any measures required to ensure that the well, pipeline, or facility is left in a safe and secure condition.

Section 6.7 of Guide 56 requires license amendment applications for pipeline discontinuation under paragraph 12(f) and for abandonment under paragraph 12(g).

### 6.7 License Amendments

- 12) The licensee must submit a pipeline license amendment application for
- f) discontinuation,
  - g) abandonment/ partial removals,

Section 6.9.5 of Guide 56 defines “pipeline discontinuation”. This section and section 6.10.10.2 outline substantive and reporting requirements for the purpose of updating AEUB records to reflect the discontinuation.

### 6.9.5 Pipeline Discontinuation

Pipeline discontinuation is defined as the temporary deactivation of a pipeline or a part of a pipeline.

- 25) An application is not required for pipeline discontinuation; however, for the purpose of updating EUB records, the applicant must notify Facilities Applications by submitting a license amendment application within 90 days of completion of the pipeline discontinuation (ID 2000-09).

Industry and public notification is not mandatory for discontinuation (see Table 6.2).

- 26) When discontinuing a pipeline, the licensee must ensure that
- a) proper discontinuation procedures are in place (see Pipeline Regulation, Sections 61 and 62),
  - b) cathodic protection will be maintained, and
  - c) setback distances are retained (Table 6.3).

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### 6.10.10.2 Pipeline Discontinuation

- 100) For pipeline discontinuation, the licensee must submit
- a) a description of the method used to discontinue the pipeline(s),
  - b) a record of the medium left in the pipeline(s), and
  - c) documentation to confirm that cathodic protection will be maintained

Section 6.10.10.3 outlines reporting requirements for pipeline abandonment.

### 6.10.10.3 Pipeline Abandonment

- 101) For pipeline abandonment, the licensee must submit
- a) a description of the method used to abandon the pipeline(s), and
  - b) a record of the medium left in the pipeline(s).

### ***Oil and Gas Conservation Regulations, Alta. Reg. 151/197***

Section 12 of the *Oil and Gas Conservation Regulations* obliges the licensee of a well property to keep and file with the AEUB records and reports of operations and production of the well.

*12.010 The licensee of a well or the representative of the licensee of a well shall keep and file with the Board records and reports relating to the operations of the well in accordance with Guide 59 entitled "Well Drilling and Completion Data Filing Requirements" and any amendment to that Guide, as published by the Board.*

### **SUMMARY OF COMPLAINANT'S POSITION**

#### **Issue 1: Should the assessment of the subject properties be reduced to zero because of the AEUB Shut-In Orders?**

The Complainant requested that the assessment of the subject well properties and related pipeline properties be reduced to zero because the AEUB Shut-In Orders prohibited the wells from producing as of October 31, 2003.

The Complainant submitted that it was incumbent on the linear assessor to consider the effect of AEUB Shut-In Orders when assessing the well properties. The Complainant relied on MGB Board Order 001/04 (Kneehill Decision) to support the following propositions. First, under section 292(2)(a)(i) of the Act, "records of the Alberta Energy and Utilities Board" means all documents within the AEUB relating to the subject properties, including the Shut-In Orders. Second, the linear assessor must find the specifications and characteristics with respect to the subject properties within the context of all AEUB records. Third, section 292 of the Act does not

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restrict the linear assessor to consider only AEUB records. Rather, the linear assessor ought to consider all relevant evidence where it is necessary to clarify an AEUB record or resolve a conflict in the records.

### **Issue 2: Should the assessment of subject properties recognize additional depreciation because of the AEUB Shut-In Orders?**

The Complainant submitted that if the subject well and related pipeline properties are to be assessed, then an additional depreciation factor of 0.100 is appropriate under the Minister's Guidelines to reflect their characteristic of being shut-in by the AEUB orders. Fairness and equity demands additional consideration of the AEUB records given the unique situation of the subject well properties and related pipelines.

### **Issue 3: In the alternative, should the matter be returned to the Minister, pursuant to section 516 of the Act, if an inequity exists but no remedy is provided?**

The Complainant submitted that assessment of properties shut-in by AEUB orders is inequitable and offensive to the basic principle that non-production features of a property must be considered. If the MGB finds the assessment to be inequitable but cannot provide a remedy, the subject assessments should be referred to the Minister pursuant to section 516 of the Act.

## **SUMMARY OF RESPONDENT'S POSITION**

### **Respondent's Witness**

Ms. Chris Uttley, AMAA, testified on the Respondent's behalf. As the Operations Manager and Appeals Coordinator of the Linear Property Assessment Unit of Alberta Municipal Affairs, she is responsible for preparing request for information packages for linear property operators, preparing linear assessments, interpreting and applying the relevant legislation, reviewing linear property complaints and appearing as a witness on behalf of the Designated Linear Assessor.

### **Issue 1 and 2**

#### **Issue 1. Should the assessment of the subject properties be reduced to zero because of the AEUB Shut-In Orders?**

#### **Issue 2. Should the assessment of subject properties recognize additional depreciation because of the AEUB Shut-In Orders?**

The Respondent requested that the MGB confirm the assessments of the subject properties. Several arguments were advanced which the MGB has organized under the headings below.

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### Subject properties were assessed in accordance with legislative requirements

The Respondent's main argument is that section 292 of the Act and section 6(2) of the Assessment Regulations legislatively mandate linear property assessments to be prepared in strict accordance with the Minister's Guidelines, based on the condition and specifications of the property on October 31 of the assessment year, as contained in AEUB records. The provisions in the Minister's Guidelines are equally unambiguous in prescribing assessment parameters. The assessments of the subject properties were assessed in this manner and, therefore, cannot be challenged.

Ms. Uttley described the assessment process as summarized in the Background section of this Board Order. She then walked through the provisions of the Minister's Guidelines in reference to tabs 13 and 14 of Exhibit R-4, and Exhibit R-5 which present the assessment parameters for the subject properties in tabular form. From this testimony, the following aspects are salient.

First, the assessments of the subject properties were based entirely on AEUB records as self-reported by the Complainant. No request for information was issued to the Complainant for the subject properties. Ms. Uttley testified that the records were correct. The Respondent noted that Complainant expressly stated in Exhibit C-2 that it did not take issue with the AEUB records.

Second, under section 4.004 of the Minister's Guidelines, the eight-digit well status code was based on characteristics of the subject well properties, as contained in AEUB records.

Third, section 4.005 and Table 4.5 of the Minister's Guidelines were used to determine the well status descriptions. Under Table 4.5, one determinant of the well status description is the total production characteristics of the well in the 12 months prior to October 31 in the assessment year. In all cases, the total gas production of each subject well property in the 12 months prior to October 31, 2003 was greater than zero and the appropriate well status descriptor was selected from Column 3 of Table 4.5. Notably, Column 4 of Table 4.5 applies if the total oil, gas and condensate production is zero in the 12 months prior to October 31 of the assessment year. The Minister's Guidelines, however, make no provision whatsoever for shut-in or suspended wells.

Fourth, Tables 4.10 to 4.13 (as appropriate) of the Minister's Guidelines were used to determine the Schedule D additional depreciation factors for the subject wells. Under these Tables, the appropriate Schedule D factor depends on the total oil, gas and condensate production in the 12 months prior to October 31 of the assessment year. In all cases, the total gas production of each subject well property in the 12 months prior to October 31, 2003 was greater than zero and yielded a Schedule D factor of 1.000.

Fifth, Table 4.4 of the Minister's Guidelines was used to determine the Schedule D additional depreciation for the subject pipelines. None of the subject pipeline properties was eligible for a

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Schedule D factor of 0.100 because of the W-Policy or the discontinued status. The W-Policy was inapplicable because none of the subject pipelines is located in the same location as a well with zero total production, as required in Table 4.4. Depreciation for discontinued pipeline was inapplicable because none of the pipelines had a discontinued status as contained in the AEUB records, as required by Table 4.4.

The Respondent submitted that the Complainant's request for zero assessment or additional Schedule D depreciation amounts to erroneously treating the AEUB Shut-In Orders as *de facto* abandonment, suspension or discontinuation of the subject wells and pipeline properties. The AEUB records, however, clearly indicate that the properties have not been abandoned, suspended or discontinued.

Moreover, no evidence exists to suggest that the Complainant has applied for a pipeline license amendment under section 6.7 of Guide 56. Also, it has not complied with the onerous requirements for pipeline discontinuation under section 6.9.5, 6.10.2 of Guide 56 or pipeline abandonment under 6.10.10.3 of Guide 56, even though it was entirely within the Complainant's power to do so. On the contrary, by opposing the AEUB Shut-In Orders, the Complainant's evinced an intention to use the wells to produce gas in the future.

Additionally, the Respondent submitted that interim Shut-In Orders are not analogous to abandonment or suspension of well properties. Abandonment requires permanent dismantlement of the properties whereas the interim Shut-In Orders may be repealed. Suspension requires cessation of operations, whereas some events of the multi-event wells were not affected by the Shut-In Orders.

### Complainant bears the onus of amending the AEUB record

The Respondent submitted that the Complainant's argument that the Shut-In Orders are part of the AEUB record is akin to arguing that any internal AEUB memorandum is part of the AEUB record. In contrast, the Respondent submitted that the information on the AEUB license must be considered when the AEUB places the onus on the licensee to self-report and comply with the procedures to amend the license.

The Respondent referred to Board Order MGB 151/03 (Penn West Decision) in which the MGB dismissed a complaint seeking to assess a pipeline on its actual utility rather than its operational status in the AEUB record. The MGB stated: "The legislative direction is clear and before the benefits of additional depreciation are conferred on an owner, the appropriate steps must be taken under Guide 56 to change the AEUB records." The Respondent also referred to Board Order MGB 154/03 (Apache Decision) for a similar proposition.

The Respondent distinguished the Kneehill Decision and Board Order MGB 125/04 (Northern Sunrise Decision) submitted by the Complainant. First, in both these cases the Complainant was

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the municipality not a licensee of linear property. It was in this context that the MGB opined that municipalities have no recourse to amend erroneous AEUB records, except perhaps to inform the DLA and request an amended assessment. Second, the Kneehill Decision involved a discrepancy between AEUB attribute records and graphical records; the Northern Sunrise decision involved AEUB records known to be inaccurate. In contrast, the correctness of the AEUB records are not in dispute in the present case.

### AEUB Shut-In Orders do not affect assessments

Even if they had been considered as part of the AEUB record, Ms. Uttley testified that the AEUB Shut-In Order would not have affected the assessments.

First, in order to receive a Schedule D factor of 0.100, the Minister's Guidelines require well properties to have zero total production in the 12 months prior to October 31, 2003; pipeline properties must be attached to such a well or be discontinued. This was not true for any of the subject wells or pipelines.

Second, AEUB Shut-In Order 03-001 affected only one event (as identified by the Well-ID) in each of the 40 multiple-event wells. As such, part of the well could produce gas as of October 31, 2003, notwithstanding the Shut-In Orders. It would, therefore, be unfair and inequitable as between other producing wells in Alberta to grant a zero assessment to these subject properties.

Third, two of the subject well properties were affected solely by AEUB Shut-In Order 04-001. It was issued on June 8, 2004 and effective July 1, 2004. It was, therefore, irrelevant to the assessment of these two subject properties, which must reflect the condition of the properties as of October 31, 2003.

Fourth, AEUB Shut-In Order 04-001 repealed and superseded AEUB Shut-In Order 03-001. AEUB Shut-In Order 04-001, however, did not shut-in 18 subject well properties affected by Shut-In Order 03-001. As such, production from these 18 properties was ultimately unfettered by any Shut-In Orders.

Fifth, AEUB Shut-In Orders are not new. As such, it may be presumed that the legislature contemplated their existence but chose not to recognize additional depreciation on their account. Ms. Uttley indicated that AEUB Shut-In Orders existed in 1999, e.g. Gulf Surmont.

### Complaint amounts to collateral attack on legislation

In light of the above positions, the Respondent submitted that the complaint was a collateral attack on alleged inequities of the legislation. The Respondent submitted that the legislature is presumed to be aware of its intent and as such it is beyond the MGB's jurisdiction to remedy these alleged inequities.

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The Respondent referred to Board Order MGB 099/03 (Two Hills Decision) in which the MGB decided that W-Policy depreciation must be strictly applied to a pipeline meeting the clear requirements of the Minister's Guidelines, even though it was transmitting product. The MGB stated: "The MGB is not given legislative authority to assess the fairness or equity of legislated guidelines that are clear and unambiguous."

The Respondent referred to the Apache Decision in which the MGB decided that a pipeline property with operational status under the AEUB records was not eligible for additional depreciation even though it was attached to an abandoned well. It reasoned that changes to the Minister's Guidelines required the pipelines to be associated with a non-producing well or discontinued. The MGB stated: "If there is inequity within the legislative scheme, then it can only be undone by an act of the legislators and not the MGB."

The Respondent referred to Board Order MGB 161/03 (Husky Decision) in which the MGB decided that directional oil pipelines were not eligible for W-Policy depreciation based on their well-bottom location when the Minister's Guidelines gave the linear assessor discretion to grant depreciation based on their surface location. Again, the MGB stated: "If there is inequity within the legislative scheme, then it can only be undone by an act of the legislators and not the MGB."

### **Issue 3: In the alternative, should the matter be returned to the Minister, pursuant to section 516 of the Act, if an inequity exists but no remedy is provided?**

The Respondent submitted that it is inappropriate to refer the assessments of the subject property to the Minister, pursuant to section 516 of the Act.

First, the Respondent submitted that the assessments were not unfair or inequitable.

Second, the Respondent submitted that section 516 of the Act is applicable only when the MGB finds the assessment process, as opposed to the assessment legislation, to be unfair.

Third, section 571 of the Act authorizes the Minister to direct an inspection. An inspection pursuant to section 571 is a pre-requisite to the Minister's power to quash an assessment under section 324. The Respondent submitted that an inspection or audit is neither appropriate nor necessary to assess legislative intent.

Fourth, section 571 of the Act refers to the books and records of the municipality. In the present case, all records are available and are not in error. An inspection would, therefore, be of no value.

## **BOARD ORDER: MGB 115/05**

Fifth, section 324 of the Act permits quashing of an assessment if the assessment was not prepared in accordance with the Act and regulations. As discussed above, the Respondent submitted that the Minister's Guidelines were strictly applied.

The Respondent referred to Board Order MGB 089/02 (Okotoks Decision), Board Order MGB 287/98 (Canmore Decision) and Board Order MGB 009/05 (Pengrowth Decision) in which the MGB denied referring assessments to the Minister, having found that they were prepared in accordance with the legislation.

### **REBUTTAL OF THE COMPLAINANT**

#### **Issue 1 and 2**

**Issue 1: Should the assessment of the subject properties be reduced to zero because of the AEUB Shut-In Orders?**

**Issue 2: Should the assessment of subject properties recognize additional depreciation because of the AEUB Shut-In Orders?**

#### Not a complaint of the Minister's Guidelines

The Complainant submitted that the complaint does not amount to a collateral attack on the Minister's Guidelines. Rather, the main issue before the MGB was the fairness and equity of the assessment of the subject properties. Whereas the characteristics of the subject properties fall outside the scope of the Minister's Guidelines at the relevant date of October 31, 2003, the properties should be treated in a manner that is consistent with properties receiving additional depreciation due to non-productivity. As such, section 293(2) of the Act should be applied.

#### AEUB Shut-In Orders should be considered

The Complainant reminds the MGB that the Shut-In Orders were in effect on October 31, 2003, beyond the Complainant's control. Based on the Kneehill Decision, the Respondent submitted that the linear assessor has a duty to review all records to arrive at a fair and equitable assessment.

The Complainant submitted that administrative convenience of basing assessments on AEUB records should not override the assessor's duty to prepare a correct assessment. The Complainant referred to the Northern Sunrise Decision in which the MGB found that the Complainant municipality should not be denied a complaint where the assessment is shown to be incorrect.

The Complainant submitted that the Penn West Decision did not consider what additional AEUB records could have been relevant to the assessment issue. Further, in the present case, any onus

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on the Complainant to update the AEUB records was nullified by the AEUB's issuance of the Shut-In Orders.

The Complainant submitted that the statement in the Two Hills Decision that "the question that the MGB must consider is ... whether [the W-Policy] has been applied correctly and achieves a fair and equitable result within the governing legislation." indicates that the assessment outcome in addition to the process must be fair and equitable. Further, the MGB stated that actual utility is not relevant to W-Policy depreciation. If so, the Shut-In Orders are determinative and production in the year prior to the assessment date is irrelevant.

The Complainant submitted that the Apache Decision is distinguishable in that the changes to legislation clearly addressed the property at issue. In contrast, AEUB Shut-In Orders were not contemplated by the Minister when the Minister's Guidelines were adopted.

The Complainant submitted that the Husky Decision is incorrect. It ignores the direction under section 293(2) of the Act for the assessor to consider the treatment of similar properties when the Guidelines do not provide a manner in which property is to be assessed. Furthermore, the Act prevails over the Guidelines.

**Issue 3: In the alternative, should the matter be returned to the Minister, pursuant to section 516 of the Act, if an inequity exists but no remedy is provided?**

The Complainant distinguished the Okotoks Decision on the basis that in that case the Complainant municipality directly challenged the valuations standards in the Minister's Guidelines, whereas in the present case the situation falls outside the contemplation of the Minister's Guidelines.

The Complainant distinguished the Canmore Decision as concerning an equalized assessment. Furthermore, the regulations in that case addressed the properties and again, the Complainant municipality directly challenged the valuation standards.

### **FINDINGS**

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

1. AEUB records indicate that all the subject well properties had a total gas production greater than 477 m<sup>3</sup> in the 12 months prior to October 31, 2003.
2. AEUB records indicate that all subject pipeline properties had a status of "operational" on October 31, 2003.

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3. The linear assessor correctly applied the depreciation factors prescribed in the Minister's Guidelines.
4. Notwithstanding their shut-in status, the subject wells and pipelines are intended for the gathering, distribution and transporting of oil and gas products. (The key words are "intended for" and not "used for" in the definition of linear property.)
5. Although a shut-in record is a record of the AEUB, it is not a parameter in the determination and preparation of the linear assessment or the application of additional depreciation.
6. The linear assessor applied the Minister's Guidelines in a fair and equitable manner and in accordance with the legislation.

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

### **DECISION**

The complaint in respect to the assessment is denied and the assessment is confirmed for each of the properties shown in Appendix "C" in the indicated amounts.

It is so ordered.

### **REASONS**

#### **Issues 1 and 2**

**Issue 1: Should the assessment of the subject properties be reduced to zero because of the AEUB Shut-In Orders?**

**Issue 2: Should the assessment of subject properties recognize additional depreciation because of the AEUB Shut-In Orders?**

The Complainant's request for zero assessment or additional depreciation under Schedule D of the Minister's Guidelines are collectively dismissed for the following reasons.

The Complainant made no argument that the subject property was not linear property as a result of its shut-in status. The Complainant appeared to accept as an agreed-to fact that the subject property was linear property. Nonetheless, the MGB examined carefully the definition of linear property in the Act to determine whether or not the assessment of the subject properties were impacted by the shut-in status. The definition of linear property is not limited to pipe or wells that are just "used". The definition of linear property in section 284(1)(k)(iii) clearly refers to "intended for or used" in reference to pipe, pipe in a well and well head installations. The definition makes no reference to abandonment, suspension or shut-in and relies on the meaning of "intended for or used". The MGB examined the Shut-In Orders from the AEUB and the

## **BOARD ORDER: MGB 115/05**

production flow records and concluded that the subject linear property fell within the meaning of ‘intended for or used’ because the AEUB orders issued in 2003 and 2004 only resulted in reducing gas production. Evidence illustrated there was ongoing production. As well, there was no indication of any abandonment of any of the subject linear properties. The MGB then examined in detail whether or not the assessments for the subject linear property were prepared according the relevant sections of the Act and the assessment regulations.

Section 292(2) of the Act imposes two requirements on how linear property assessments are to be prepared. First, they must reflect the specifications and characteristics of the linear property on October 31 of the assessment year as contained in the AEUB records or a report requested by the assessor. Second, they must reflect the valuation standard set out in the regulations for the linear property.

The Complainant referred extensively to Board Order MGB 001/04 in support of giving meaning to the shut-in status of the wells. The MGB finds that the fact scenario and the applicable sections of the Minister’s directives in the Minister’s Guidelines are different in this case. In Board Order MGB 001/04, the determining factor in the Minister’s Guidelines for the assessment was the length of pipe and, therefore, consideration of AEUB records (graphic and attribute) was relevant to the determination of the length of pipe. In this case, the determining factor in the assessment pursuant to the Minister’s Guidelines is the total production prior to October 31 rather than status as of October 31. Therefore, consideration of the Shut-In Orders is not determinative.

In consideration of the first requirement under section 292(2) of the Act, the MGB finds that AEUB records indicate that each of the subject well properties had a total production greater than 477 m<sup>3</sup> in the 12 months prior to October 31, 2003. Exhibit R-5 presents the production record for the subject well properties. For each of the 75 subject wells, the Complainant has self-reported a total gas production volume in excess of 477 m<sup>3</sup>. In Exhibit C-2, the Complainant indicated it was not challenging the AEUB record.

Likewise, the MGB finds that the AEUB records indicate that the subject pipeline properties had a status of “operational” on October 31, 2003. Tab 14 of Exhibit R-4 presents the attributes of the subject pipeline properties. For each of the 81 subject pipelines, the letter “O” denoting operational appears under the status field. Again, the Complainant indicated it was not challenging the AEUB record.

On this footing, the MGB proceeds to the second requirement under section 292(2) of the Act. That is, the assessments reflect the valuation standards in the regulations. Pursuant to this provision, section 6 of the Assessment Regulations indicates that the linear assessor must follow the Minister’s Guidelines.

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The MGB finds that the linear assessor did follow the Minister's Guidelines in applying the Schedule D factors for the subject well properties. Based on the assessment classification codes, the Minister's Guidelines direct the linear assessor to use Table 4.10 to determine Schedule D factors for well properties. In this table, the Schedule D factor depends solely on the total production in the 12 months prior to October 31, 2003. Table 4.10 prescribes that the Schedule D factor is 1.000 when the well's total annual production exceeds 477 m<sup>3</sup>. In light of the production characteristics of the subject wells, the linear assessor must apply a Schedule D factor of 1.000 to comply with section 292(2) of the Act.

Likewise, the MGB finds that the linear assessor did follow the Minister's Guidelines in applying the Schedule D factors for the subject pipeline properties. The Minister's Guidelines direct the linear assessor to use Table 4.4 to determine the Schedule D factors for pipeline properties. This table permits additional depreciation only in three specific circumstances. The W-Policy depreciation does not apply because each of the subject pipelines was located in the same LSD as a well that was producing in the 12 months before October 31, 2003. Depreciation based on a discontinued status does not apply because the AEUB status of the subject pipelines was not "discontinued", but "operational". Depreciation based on a CFBS status does not apply because the pipelines are not within the boundaries of CFB Suffield. Hence, none of the circumstances apply to warrant additional depreciation. As such, the linear assessor must apply a Schedule D factor of 1.000 to the subject pipelines to comply with section 292(2) of the Act.

The Complainant contended that the assessment must be reduced when the AEUB Shut-In Orders are considered as part of the AEUB Records. Even if they are part of the AEUB records (an issue which is not necessary for the MGB to decide), the MGB finds that the Shut-In Orders are irrelevant to the assessment of the subject properties. Simply put, Tables 4.4 and 4.10 of the Minister's Guidelines do not provide for additional depreciation of wells and pipelines affected by Shut-In Orders. If the MGB were to reduce the assessment or grant additional depreciation for the subject properties on this ground, the MGB would effectively be usurping the Minister's authority to enact guidelines for assessing linear property by adding an additional criterion for Schedule D depreciation.

The Complainant contended that section 293(2) of the Act applies because AEUB Shut-In Orders fall outside of any scenario in the Minister's Guidelines and could not possibly have been contemplated by the Minister when the Minister's Guidelines were adopted. The MGB is of the opinion that section 293(2) of the Act is of no assistance to the Complainant. First, the operation of section 293(2) is conditional on the absence of regulated procedures for preparing assessments. The Minister's Guidelines clearly provide procedures for assessing well and pipeline properties. The distinction must be made between the absence of procedures for a property type and the silence of the content of those procedures. Section 293(2) applies only to the former situation, which is why assessments of similar properties must be considered in those cases. In contrast, if a scenario falls outside the content of those procedures, it is simply not to be considered. Second, if the Complainant's position is followed to its logical conclusion, then

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section 293(2) becomes operative for every aspect of AEUB records (which may or may not include Shut-In Orders) on which the Minister's Guidelines are silent. The MGB does not accept that this was the Minister's intent in enacting a standardized valuation scheme. In this regard, the MGB notes that section 1.003 of the Minister's Guidelines provides that the "additional depreciation for linear property described in Schedule D is exhaustive. No additional depreciation can be given by the assessor." Third, the Complainant adduced neither evidence to suggest that the Shut-In Orders were beyond the Minister's contemplation nor evidence of how similar properties are assessed. Any determination on this matter would, therefore, be a futile and speculative exercise. In addition, there is clear reference in the Minister's Guidelines to determining the well status and depreciation for the subject property based on the sum of the production in the 12 months prior to October 31 of the assessment year.

In summary, no reduction is warranted because the linear assessor correctly applied the Minister's Guidelines, as mandated by section 292(2) of the Act and section 6 of the Assessment Regulations.

### **Issue 3: In the alternative, should the matter be returned to the Minister, pursuant to section 516 of the Act, if an inequity exists but no remedy is provided?**

As a preliminary remark, the MGB wishes to address the Respondent's suggestion that the Complainant's position is akin to arguing *de facto* abandonment or suspension of wells and abandonment of pipeline properties. This may create confusion by implying that abandoned or suspended wells and pipeline properties receive additional Schedule D depreciation under the Minister's Guidelines. This is clearly not the case under the 2003 Minister's Guidelines, although it may have been in previous years. Rather, the criteria for Schedule D depreciation of wells and pipelines are the total production of the well in the assessment year and the discontinued status of a pipeline.

Section 293(1) of the Act requires the assessor to apply the valuation standard in a fair and equitable manner. The MGB finds that the linear assessor did apply the valuation standard in a fair and equitable manner. In the context of regulated linear property assessment, fairness and equity is achieved by the consistent application of valuation standards among properties throughout the province.

It can be seen that this principle remains true in the facts of this case. The 2003 Minister's Guidelines prescribe that additional depreciation of well properties is solely determined by their total production during the entire assessment year. Therefore, any well producing more than 477 m<sup>3</sup> of gas, regardless of the time during the assessment year, would be assessed in a similar manner as the subject properties. The fact that a well may have been rendered non-productive as of October 31, 2003 for any reason (whether abandonment, suspension or shut-in) is immaterial. To allow this complaint to succeed would not restore equity to the assessment, but disturb it by treating the subject properties in a preferential manner. Parenthetically, the MGB notes that if the

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AEUB Shut-In Orders persist for one entire assessment year, the Complainant's wells and pipelines will become eligible for Schedule D depreciation. Just like any other licensee, the Complainant must discontinue its pipelines or endure a year of non-production from its wells to receive the benefits of Schedule D depreciation.

The Complainant suggests that not only the assessment process but the result must be fair and equitable. From the above discussion, it can be seen that the fair and equitable assessment results from the fair and equitable application of the Minister's Guidelines. Any perceived inequities that remain arise from the legislation itself. As the MGB has stated on many occasions, the MGB's role is limited to adjudicating disputes on incorrect or unfair or inequitable assessments within the prescribed legislative framework. It does not have the authority to assess the fairness or equity of legislated guidelines that are clear and unambiguous. Here, the Minister has made a clear policy choice to award additional depreciation for non-productivity of wells during the entire assessment year, for pipelines attached to such wells and for discontinued pipelines. It is not within the MGB's jurisdiction to assess the fairness and equity of this policy. Consequently, it is unnecessary to refer the assessment to the Minister.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 21st day of November 2005.

MUNICIPAL GOVERNMENT BOARD

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(SGD) C. Bethune, Presiding Officer

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**APPENDIX "A"**

APPEARANCES

<b>NAME</b>	<b>CAPACITY</b>
G. Ludwig	Legal Counsel for the Complainant (not in attendance)
W. Barclay	Legal Counsel for the Respondent
C. Uttley	Witness for the Respondent

**APPENDIX "B"**

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

<b>NO.</b>	<b>ITEM</b>
Exhibit C-1	Submissions of the Appellant
Exhibit C-2	Rebuttal of the Appellant
Exhibit R-3	Submissions of the Respondent: Volume 1 of 2
Exhibit R-4	Submissions of the Respondent: Volume 2 of 2
Exhibit R-5	Chart: BP Energy Canada - Well Appeal for the 2003 Assessment Year – EUB Interim Shut-In Order

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**APPENDIX “C”**

**LINEAR PROPERTY ASSESSMENTS UNDER COMPLAINT  
2003 Assessment Year/2004 Tax Year**

<b>MA ID</b>	<b>Assessee</b>	<b>Tax Jurisdiction</b>	<b>TJ MAID</b>	<b>Property Type</b>	<b>LPAU-ID</b>	<b>Assessment 2003</b>
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1870063	35,280
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1870507	42,910
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1870774	35,910
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1872290	47,210
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1875342	46,920
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1875544	37,010
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1875770	49,840
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1876006	49,840
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1876026	48,040
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1886833	48,970
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1887676	46,580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1888782	42,790
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1889631	34,800
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1889840	37,040
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1889912	34,800
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1889913	32,290
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1890027	45,120
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1890070	32,810
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1890084	37,380
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1894969	45,410
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1895543	48,110
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1895731	45,980
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1895787	48,350
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1895804	45,190
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1895879	41,330
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1895923	41,330
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1896756	49,140
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1925668	41,330
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1925710	35,900
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1925735	35,080
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1926049	44,780
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1951735	50,280
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1951737	50,840
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1968069	53,170
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1977398	51,020
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984540	35,170
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984541	49,470

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20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984542	37,020
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984543	37,850
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984717	34,590
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984915	36,880
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984916	49,840
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984918	35,260
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984925	35,270
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984973	43,500
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1984974	45,510
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1985574	35,030
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1995640	43,450
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1996485	46,290
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1997275	36,880
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	1997277	49,870
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2008919	29,560
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2008971	48,750
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2009537	41,330
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2009567	42,770
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2010496	50,380
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2011104	30,140
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2011137	47,120
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2011504	41,330
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2011690	43,510
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2017946	47,880
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2017997	44,670
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2026819	31,940
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2027446	36,420
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2027554	47,170
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2028982	29,560
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2040972	37,550
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2040975	38,480
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2041626	35,530
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2042735	37,100
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2044612	35,550
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2044613	37,320
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2045090	29,560
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2045092	33,400
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Well	2057073	29,560
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121472	54,860
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121475	218,590
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121484	59,440
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121497	71,640
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121500	28,800
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121501	141,730

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20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121502	126,190
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121503	17,917
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121504	59,440
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121506	137,160
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121508	117,260
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121510	141,640
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121519	64,480
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121523	18,320
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1121529	30,970
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1149988	506,200
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1149997	73,150
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1149999	64,010
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150000	39,400
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150006	62,180
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150008	42,980
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150016	42,980
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150021	114,360
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150023	109,730
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150026	52,250
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150031	32,240
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150032	104,490
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150033	29,030
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150041	25,070
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150042	14,330
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150044	10,750
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150049	3,580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150051	5,730
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150052	12,540
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150053	23,640
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150054	3,580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150069	4,660
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1150072	90,560
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151137	2,150
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151139	2,150
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151142	46,440
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151145	34,830
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151149	52,250
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151152	65,590
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151154	2,900
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151157	2,510
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151159	145,130
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151160	73,140
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151161	2,150
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151163	2,150

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20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151165	108,260
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151166	80,110
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151169	2,900
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151171	12,770
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151177	7,160
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151178	3,580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151179	3,580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151180	35,820
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151181	17,910
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151182	3,580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1151193	7,770
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204267	63,860
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204272	264,720
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204273	8,710
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204275	91,720
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204276	257,610
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204281	149,500
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204284	13,720
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204288	3,580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204289	3,580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204290	3,580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204297	79,880
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1236529	30,800
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1236531	107,900
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1236532	24,980
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1236534	19,150
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	2132249	580
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	2132253	1,740
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	2132254	560
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	2140201	460
20668	BP Canada Energy Company	R.M. of Wood Buffalo	0508	Pipeline	1204268	41,800