

BOARD ORDER: MGB 133/03

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 pertaining to certain linear property assessments for the 2002 tax year filed by the following linear property owner/operator

BETWEEN:

Progress Energy Ltd., represented by the Assessment Advisory Group - Complainant

- a n d -

The Department of Alberta Municipal Affairs and the Designated Linear Assessor for the Province of Alberta, represented by Brownlee Fryett - Respondent

BEFORE:

A. Knight, Presiding Officer
L. Lundgren, Member
R. Scotnicki, Member

D. Woolsey, Secretariat

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on February 24, 2003.

This is a complaint filed with the Municipal Government Board (MGB) by Progress Energy Ltd. from the linear assessment notice issued by the Respondent Designated Linear Assessor (DLA) from the 2001 assessment year, 2002 tax year. This complaint is for Permanent Property Inventory Identifier (PPI-ID) 745320. This property is a pipeline and owned and/or operated by the Complainant, Progress Energy Ltd.

BACKGROUND

The MGB received three linear property complaints from the Assessment Advisory Group on behalf of Progress Energy Ltd. on April 15, 2002. Pursuant to the Complainant's June 19th correspondence, the MGB confirmed the withdrawal of PPI-ID 697321 by issuing a Notice of Withdrawal on July 10, 2002. On August 12th, the Complainant informed the MGB that it wished to withdraw PPI-ID 745317, which was confirmed with a Notice of Withdrawal issued by the MGB on August 28, 2002. The Complainant submitted further information and reasons relating to the properties under complaint on September 18th and again on October 28th. The Legal Argument and Volume of Documents were

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received by the MGB from the DLA on November 21, 2002. The Rebuttal of the Complainant to these submissions was received by fax on December 12, 2002.

On December 16, 2002 the MGB issued a Notice of Hearing, setting the date of February 24, 2003 to hear the complaint. In addition, the MGB also issued a notice to the Municipal District of Greenview being the municipality in which the linear property is located. This notice gave direction to the municipality on the appropriate procedures that it should take if it wished to be granted status as an Intervenor for the February 24th hearing. The Municipal District of Greenview did not make any submissions or representations to the MGB.

A revised Notice of Hearing was later issued on February 19, 2003 moving the hearing from the morning to the afternoon of February 24th.

This Board Order represents the decision of the MGB pertaining to the linear property complaint for PPI-ID 745320, which was the subject of that hearing.

OVERVIEW

Under the existing Act linear property is prepared based on the records of the Alberta Energy and Utilities Board (AEUB). In this case the Complainant argues that pipeline which has a facility code BE in the AEUB records and has no utility for a period of time warrants additional depreciation. The Respondent on the other hand argues that the assessment regulations recognize only additional depreciation for pipeline that has a discontinued status (D) recorded at the AEUB and this is not the case with the subject pipeline. The Complainant further argues that past decisions of the MGB stand for the requirement to consider the actual utility of the pipeline in determining the application of additional depreciation. The broad question that is before the MGB is whether or not the actual physical status or utility of a pipeline is a relevant characteristic to consider when determining if additional depreciation is applicable to that property

ISSUES

1. Does a property owner, who does not register the status of his pipeline with the AEUB as discontinued, have a right to additional depreciation
2. Is there a requirement for the property owner to request a change to the record of the AEUB?
3. Is there a specific procedure in the assessment regulation that requires additional depreciation for discontinued pipe? Does the procedure allow for any discretion or latitude in the application of additional depreciation? Did the assessor apply the 2001 Alberta Property Assessment Manual (Manual) and 2001 Minister's Guidelines for the Assessment of Farmland, Linear Property,

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Machinery and Equipment, Railway (Guidelines) correctly in coming to an assessment value for the subject pipeline?

4. Is the subject pipeline, which is not being used, eligible for additional depreciation, notwithstanding the fact that it does not show a discontinued status in the records of the AEUB?
5. Does a facility code of BE (Blind End) in the records of the AEUB represent a characteristic that should be considered when determining if additional depreciation is applicable? Does the Assessment Regulation allow for additional depreciation when there is a BE code in the records of the AEUB?
6. Is the fact scenario in Board Order MGB 168/01 similar to the fact scenario in the subject case?
7. Is the subject property assessed equitably with other similar properties?

LEGISLATION

In deciding this matter, the MGB examined the legislative authority contained in the Act, the Regulations, the Guidelines and the Manual.

Municipal Government Act

The source of the DLA's authority to prepare assessments for linear property is found in Part 9 of the Act.

Section 284 defines certain terms for, among other things, the purposes of linear property assessment. The definition of linear property includes pipelines.

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,*

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

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

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

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

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

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

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

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

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

but not including

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

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

(II) a regulating or metering station,

or

(G) land or buildings;

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Section 285 states unequivocally that an assessment must be prepared for each property, excluding only specifically enumerated properties found in Section 298. There is no suggestion that the properties under complaint fall under Section 298.

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in Section 298.

Section 298(1) lists a series of types of property which are excluded by law from assessment. For brevity of this order Section 298 of the Act is not duplicated in this order.

After mandating the assessment of all property within a municipality, the Act goes on to provide direction as to the method of assessment for specific types or property. Section 292 is the primary provision that sets out the DLA's authority for assessing linear property. It directs the DLA to the regulations for the valuation standard and imposes the requirement that the assessment must reflect both that standard and the specifics of the relevant linear property. Those specifics will be found by the DLA in the records of the AEUB or in a report supplied by the operator of the linear property if the DLA requests it.

292(1) Assessments for linear property must be prepared by the assessor designated by the Minister.

(2) Each assessment must reflect

(a) the valuation standard set out in the regulations for linear property, and

(b) the specifications and characteristics of the linear property on October 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the linear property, as contained in

(i) the records of the Alberta Energy and Utilities Board, or

(ii) the report requested by the assessor under subsection (3).

(3) If the assessor considers it necessary, the assessor may request the operator of linear property to provide a report relating to that property setting out the information requested by the assessor.

(4) On receiving a request under subsection (3), the operator must provide the report not later than December 31.

(5) If the operator does not provide the report in accordance with subsection (4), the assessor must prepare the assessment using whatever information is available about the linear property.

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In the Act the DLA is an assessor appointed by the Minister.

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

- (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, or*

As well, the Guidelines defines assessor.

2001 Minister’s Guidelines for the Assessment of Farmland, Linear Property, Machinery and Equipment, Railway

General Definitions

- (c) assessor means:
 - (i) in respect of Linear Property, the person designated by the Minister to carry out the duties and responsibilities of an assessor under the Act.

Municipal Government Act

Section 293 of the Act is a directive to all assessors, including the DLA. It dictates a general mandatory methodology for the DLA that the assessment must be prepared in a fair and equitable manner, applying the valuation standards and procedures in the regulations. Where the Regulations are silent as to procedure, subsection 2 directs the DLA to take into consideration assessments of similar property.

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.*

These latter two sections go to the heart of the dispute because the issue in this hearing is primarily concerned with the DLA’s authority and whether the practice adopted in this case is a regulated procedure authorized in the Manual or a procedure authorized under Section 293(2).

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Accordingly, the relevant regulations must be examined, which in this case are the following.

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

The valuation standard and procedures referred to in Sections 292/293 above are found in Section 6 of the Regulation:

Valuation standard for linear property

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

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

It is readily observed that the “standard” in this case is the outcome of a calculation found in the Guidelines. While guidelines do not usually have the legal authority of legislation or regulations, in the case of linear property, Section 6 of Alberta Regulation 289/99 prescribes them as having legal force. The valuation standard and procedures that the DLA must apply will accordingly be found therein.

2001 Minister’s Guidelines for the Assessment of Farmland, Linear Property, Machinery and Equipment, Railway

Section 1.001(f) explains that the Guidelines for linear property are comprised of the 2001 Alberta Linear Property Assessment Manual.

These guidelines are comprised of the following:

1.001 APPLICATION

(f) 2001 Alberta Linear Property Assessment Manual, in the case of linear property in a municipality, attached as Appendix II

Section 3.002 contains the calculation for the assessment of linear property. The factors that are to be inputted into the calculation are set out in the Manual. The part of the calculation that is the subject of this hearing is 3.002(d).

3.02 CALCULATION OF ASSESSMENT

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

- (a) establishing the base cost as prescribed in Schedule A of the 2002 Alberta Linear Property Assessment Manual;
- (b) multiplying the base cost by the appropriate Assessment Year Modifier prescribed in Schedule B of the 2001 Alberta Linear Property Assessment Manual, to adjust the base cost to the assessment year;
- (c) multiplying the amount determined in clause (b) by the appropriate depreciation factor prescribed in Schedule C of the 2001 Alberta Linear Property Assessment Manual;
- (d) if applicable, adjusting the amount determined in clause (c) for additional depreciation as prescribed in Schedule D of the 2001 Alberta Linear Assessment Manual.

In the subject case it is the application of (d) which is in dispute between the parties. The Complainant argues that the DLA did not apply the depreciation correctly according to Schedule D and had no authority to apply a conversion factor.

2001 Alberta Linear Property Assessment Manual

Section 1.005 of the Manual provides definitions for “discontinued” pipe, “Non-producing well” and “Operational” pipe. Each of these definitions have distinctive meanings.

1.005 PIPELINE (PL)

In the Manual, the following definitions apply:

- (b) “discontinued” is the status of pipe as determined by the record at the Alberta Energy and Utilities Board.
- (g) “Non-producing well” means a well for which an assessment is prepared but did not produce for the period of 12 months before October 31 of the assessment year as determined by the record at the Alberta Energy and Utilities Board or as determined by the assessor.
- (h) “Operational” is a pipe status given to the linear property by the Alberta Energy and Utilities Board or as determined by the assessor.

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Section 4.003.100 of Schedule D of the Manual deals with “additional depreciation”, which in this case is applicable when any of the three conditions listed are met. The question for the present case is whether or not additional depreciation is applicable to the properties because they are not being used and have a code BE.

- 4.000 SCHEDULE D – ADDITIONAL DEPRECIATION
- 4.003 PIPELINE (PL)
- 4.003.001 Pipe

Additional depreciation of pipe shall be determined using the table below.

Code	Pipe	Depreciation Factor
W	Pipe that has a facility code WE and the from location is within an LSD that has a Non Producing Well	0.10
D	discontinued	0.10
B	Pipe constructed prior to 1940*	0.50

* Status declared by each company

SUMMARY OF COMPLAINANT’S POSITION

The Complainant submitted that it has not registered a discontinued status for the subject pipeline because it plans on using the pipeline at some point, and because it was not certain at the time that the pipeline would be fully assessed as if it were in use. It admits that the subject pipeline is built and capable of use, but has never been tied into the well and is in fact non-operational even though the records of the AEUB show it as having an operational status. It was argued that the facility code in the records of the AEUB shows a BE code, meaning that the pipeline has a Blind End. A Blind End, it was suggested, shows that the pipeline cannot receive the product from a well and that the BE facility code is or should be an easy indicator to the DLA that the pipeline is not in use.

The Complainant submitted that it understands that the assessment rate or value which has been derived at for the subject property was done through a regulated process. It was further conceded under cross-examination that the DLA had correctly applied the Guidelines in assessing the subject property. The Complainant argued that although the rate to be applied is regulated, the assessment itself is not fair or equitable because the line is not being used. It was argued that utility of linear property should always be a valid consideration for the DLA when preparing an assessment. This means that the actual physical or operational status of the pipeline should govern the assessment. Since the subject pipeline is not being used, it should not be assessed at the same value that it would be if it were being used.

It was also submitted that previous Board Orders of the MGB have recognized that utility should be a valid consideration for the DLA when preparing an assessment for linear property. It was suggested in

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the rebuttal submission of the Complainant that Board Order MGB 168/01 stands for the proposition that the MGB has jurisdiction to change an assessment that is not fair and equitable by giving plain and common sense meaning to the applicable procedures in order to achieve an equitable outcome. Further, it was within the assessor's discretion to change the assessment for the subject property. It is maintained that the request for additional depreciation now before the MGB, is not unreasonable and that the complaint should be allowed by changing the assessment.

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SUMMARY OF RESPONDENT'S POSITION

Early in the hearing the DLA suggested that the complaint boils down to one issue: Does the linear assessor have authority to apply depreciation that is not prescribed by the legislation?

The legislation permits neither the assessor nor the MGB to apply additional depreciation where it is not prescribed by law. The request of the Complainant for additional depreciation is based on two mistaken assumptions. First, that a regulated assessment framework contemplates utility as one of the prime determinants in coming to an assessment that is fair and equitable. Second, that the concept of equity in linear property assessment is the same as the concept of equity in non-linear assessment.

There is no discretion to go beyond the criteria that prescribes the applicable depreciation amounts and, if the MGB is to allow the complaint, it would essentially be declaring the Guidelines themselves incorrect and unfair, and would be substituting its own criteria for depreciation, in order to arrive at an assessment. Therefore, what the complaint amounts to is an appeal of an assessment policy prescribed by law. The MGB is not vested with the authority to change the Policies or Guidelines of the Minister.

There is a process to be followed when seeking to make applicable the additional depreciation set out in the Manual. Mr. Michael Gerald Moffat, a pipeline engineering specialist and member of the Association of Professional Engineers, Geologists and Geophysicists of Alberta, gave evidence that the process contemplated in linear property assessment is largely based on self-reporting requirements with which the owners of linear property are expected to comply. As such, the onus is on the owner or licensee to register the pipeline information with the AEUB if it wishes to take advantage of the actual status of the pipeline for assessment and taxation purposes. He stated that there are advantages that accrue to owners of pipeline by not registering a discontinued status with the AEUB, such as not having to pay for the de-activation, and possibly the subsequent re-activation fees associated with changing the status of the pipeline in the records of the AEUB.

Attention was drawn to AEUB Interim Directive ID 2000-09, which requires a licensee to file a license amendment with the AEUB to inform it of the discontinuation of a licensed pipeline in accordance with Guide 56. This replaced the former procedure, which required the AEUB to approve an application to discontinue a pipeline. Guide 56 sets out filing requirements of the AEUB that must be met for those owners who wish to register a change in status of a pipeline or register a new pipeline with the AEUB. It was suggested that there is an obligation for the owner to comply with the steps laid out in Guide 56 in order to ensure that the records of the AEUB are consistent with the actual status of the pipe. Mr. Moffat noted that a pipeline that is registered as discontinued with the AEUB does not mean that it is incapable of any further use. When an owner wishes, he or she can re-apply to have the pipeline return to operational status. He reiterated, however, that only when the pipeline has a registered status of discontinued is the pipeline entitled to additional depreciation.

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The DLA also introduced the oral evidence of Mr. Dan Driscoll, Manager at the Assessment Services Branch of the Department of Municipal Affairs. Mr. Driscoll gave evidence as to the nature of the valuation standard that the DLA is to apply to linear property. He suggested that the origin behind the valuation standard for linear property was based on a type of modified cost approach to value, but implemented under the umbrella of a regulated or standardized system. As an example of the nature of this regulated system of assessment, it was offered that regardless of where the pipeline is located, it is valued the same.

It was stated by Mr. Driscoll during cross-examination that the standardized system was agreed upon by all relevant stakeholders, including numerous owners and operators, and representatives from the DLA's office. The purpose of the system was to eliminate the need for two different sets of records to be kept, and to allow all parties to rely on the records of the AEUB.

Under further cross-examination, Mr. Driscoll noted that the AEUB records do not recognize a feature such as a "Blind End" on a pipeline as being a characteristic that determines additional depreciation. The assessor does not look to the BE facility code for the purposes of granting additional depreciation. A pipeline with a Blind End is treated by the assessor as being capable of use. As long as the pipeline is built and capable of use pursuant to Section 291 (2), it is to be assessed fully, short of meeting the requirements for additional depreciation in Schedule D of the Manual. The stakeholders that had agreed to the criteria for additional depreciation specifically excluded Blind Ends of pipeline as characteristics that would make additional depreciation applicable, because the industry did not wish to "short-circuit" the assessment process.

It was suggested by the DLA that the prime determinants of equity in a regulated system are the similar characteristics and specifications of linear properties as they appear in the records of the AEUB. In this sense, it is a combination of data elements that occur in the AEUB records that determines equity. When a comprehensive regulated system is set out by the legislation, then equity itself is in a way also regulated by this system.

The DLA summarized its arguments by stating that the Act directs the assessor to base assessments of linear property on the records of the AEUB. This is a self-reporting system that places the onus on the owners of linear property to report and update the status of linear property across the province. The assessment is thus driven by the status of the linear property as it is registered in the records of the AEUB. Any additional depreciation that is to be applied must be done only when the characteristics of the property as shown in the AEUB records meet the criteria for additional depreciation specified in schedule D of the Manual. There is no discretion for either the MGB or the assessor to apply the appropriate depreciation factors set out. Only when the criteria specified therein are met is additional depreciation applicable.

The DLA asserted that none of the criteria for additional depreciation are applicable for the property under complaint and requests that the complaint be denied and the assessment be confirmed.

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FINDINGS

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

1. 90% depreciation must be applied to pipeline which has a discontinued status registered in the records at the AEUB. The subject pipeline is not registered as discontinued at the AEUB.
2. The onus is on the property owner to ensure that the status of a linear property is properly reflected in the records of the AEUB. The property owner made no attempt to change the record or prove that there was an error in the record of the AEUB.
3. The assessor applied correctly the depreciation in the Manual and the Guidelines in determining the assessment for the subject property.
4. Without a registered status of discontinued in the AEUB records, the subject pipeline is not eligible for additional depreciation. The actual physical condition or utility of the pipeline is not relevant to the application of additional depreciation.
5. A Blind End or BE facility code does not meet the criteria in Schedule D of the Manual that would require the application of additional depreciation.
6. The subject linear property is not similar to the linear property considered in past MGB decisions, namely Board Order MGB 168/01.
7. There was no evidence that the subject property was not assessed equitably with other similar property.

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 is denied and the assessment is confirmed.

It is so ordered.

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REASONS

Introduction

The governing legislation is clear about the application of additional depreciation. Section 4.003.001 of the Manual specifically describes when additional depreciation must be applied. Additional depreciation is applied only in three specific situations. The first test is whether “pipe that has a facility code WE and the from location is within an LSD that has a Non Producing Well”. The subject pipeline does not have a WE and, therefore, does not qualify for this depreciation.

The second test for additional depreciation is “discontinued” which is defined in the Manual as “the status of pipe as determined by the record at the Alberta Energy and Utilities Board.”. The subject pipeline is not registered as discontinued in the records of the AEUB. There was no evidence that the Complainant made any attempt to change the AEUB record or that there had been a mistake in the records of the AEUB.

The third test for additional depreciation is “pipe constructed prior to 1940”. There was no evidence to suggest the subject pipeline qualified under this test.

Pursuant to Section 292 of the Act, the DLA is entitled to rely on the characteristics of the property as they appear in the AEUB records in order to determine if additional depreciation is warranted. The evidence did not establish that the subject property as found in the AEUB records exhibits the specified characteristics that would require the DLA to apply additional depreciation.

Additional Depreciation

Additional depreciation is only and always applicable, when any one of the three criteria in Schedule D of the Manual is met. There is no discretion for the DLA in the application of the depreciation factors therein. The depreciation factors found in the Manual are an additional aspect or extension of the valuation standards set out in the Guidelines. Alberta Regulation 289/99 requires that the valuation standards in the Guidelines and Manual must be followed. How the valuation standards in the Guidelines and the Manual are applied is dependent on the characteristics of the linear property being assessed. The relevant characteristics that are to be considered are specified in Section 292 (2) (b). Clause (i) of Section. 292 (2) (b) which directs that the relevant specifications and characteristics are those that appear in the records of the AEUB. If the characteristics in the records of the AEUB match the criteria set out in Schedule D of the Manual then, and only then, is additional depreciation applicable.

Reporting Requirements

The MGB was convinced by the evidence of the DLA that there is a contemplated procedure in place for reporting the status of a linear property to the AEUB so that the record can be synchronized with actual physical status. Guide 56 of the AEUB represents the steps that are to be taken when an owner wishes to report a change in the status of their linear property. This guide is clearly intended as a straightforward way to assist and encourage owners to update the records of the AEUB to ensure that they accurately reflect the characteristics of a linear property. This procedure clearly puts the onus on the property owner to ensure that the status of the linear property is reflected properly in the records of the AEUB, particularly when that owner wishes to take advantage of any additional depreciation that will result from the appropriate status being reported to the AEUB.

In the present case, the Complainant failed to discharge this onus. Notably, through the course of the proceedings the representative for the Complainant made it known that the reason why a discontinued status was not reported to the AEUB was due to the fact that the Complainant wished the option to use this pipeline in the future without the difficulty of applications to the AEUB. 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. This in turn ensures that any additional depreciation will be made applicable only if it is warranted by the characteristics and specifications of the property as captured by those records.

Standardized Assessment and Utility

The Complainant did not dispute that the process for linear property assessment is a regulated or standardized process and that the DLA adhered strictly to this process. Nor was it disputed that the DLA calculated an assessment value that was correct pursuant to this process. What the Complainant was arguing, is that a proper interpretation of the principles of fairness and equity, which must be considered by the DLA when applying the appropriate valuation standards, should result in an assessment where all properties that have physically similar characteristics are valued or assessed similarly. By implication, this argument suggests that the actual physical characteristics or utility of the pipeline should take precedence over the reported characteristics in the AEUB records, when preparing an assessment.

This argument requires the MGB to accept an interpretation of the valuation standards that suggests that all non-utilized pipeline should be assessed equally by having regard to its physical status, regardless of its status in the AEUB records. Not only does the MGB reject this position of the Complainant, it finds that it is grounded in an overly broad interpretative argument that is an affront to the plain reading of the applicable legislation. A careful analysis of the procedural requirements demonstrates that by basing the assessment on the status of the pipeline in the records of the AEUB, the DLA prepared the assessments correctly and according to legislative direction.

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Fairness

The MGB understands the apparent unfairness that is the basis for the argument with regard to the Blind End of the subject pipeline represented by a BE facility code in the records of the AEUB. It was established at the hearing that a Blind End on the “from” end of a pipeline means that there is a welded well cap in place that prevents any possible flow of product to the pipe. The MGB accepts the Complainant’s argument that the DLA is able to tell from a BE facility code that no product is flowing through that pipeline and that the pipeline is, therefore, not in use. This is a characteristic of the property that is contained in the records of the AEUB.

As asserted correctly in the oral evidence of the DLA, a Blind End is not a characteristic that is looked for by the assessor when determining if additional depreciation is applicable. Any additional depreciation that is to be applied to a property must be attributable to the fact that the characteristics of that property meets one of the requirements specified in Schedule D of the Manual and not because the property itself shows no utility. A Blind End is not a characteristic specified in the Manual and it warrants no additional depreciation. The Guidelines and Manual bind the assessor and the MGB alike and specify that no additional depreciation is applicable to this property.

In this specific case, the legislators created a specific additional depreciation category for discontinued pipe, which the property owner taking proper steps to change the records of the AEUB can access. There is clear legislative intent on how a property owner can access the benefit of additional depreciation. In this case the Complainant has not clearly accessed this remedy.

The Complainant is asking the MGB to create new legislative policy on appeal by declaring that a pipeline with a BE code qualifies for additional depreciation. It is not the role of the MGB to create policy, that is, the role of the legislators. One of the primary presumptions of any legislative interpretation is that the legislators have clear intent and purpose to their legislation. In this case, the legislators did not add a BE facility code as qualifying for additional depreciation.

Equity

The Complainant also represented that it is not equitable to fully assess linear property that has no utility to an owner, because similar non-operational property attracts additional depreciation. The MGB agrees with the DLA’s submission that equity in a regulated assessment regime and equity in a market value regime can have differing meanings. Both systems set the parameters of what constitutes an equitable assessment. Even if it were possible to use comparables in a standardized assessment model to establish that the assessment was inequitable, the Complainant introduced no evidence in this vein. The Complainant did not provide any evidence that any other linear property owner with a BE code was given additional depreciation. In the absence of such evidence, the MGB concludes that the assessor followed the standardized procedure in the Guidelines and assessed the property correctly and equitably.

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If there is an inequity within the legislation itself, that is the policy of the legislators and it is not the role of the MGB to correct that legislative intent. The role of the MGB on a complaint is to determine whether or not the DLA correctly and fairly applied the existing legislation to the subject property. There is no evidence to suggest he did not.

Comparison to Board Order MGB 168/01

The Complainant argued that past MGB decisions, namely Board Order MGB 168/01 stand for the proposition that the subject pipeline is similar to the subject pipeline in that decision and the Complaint should receive the same remedy of additional depreciation because in both cases the pipeline was not being utilized. This MGB determines that this proposition is a misinterpretation of Board Order MGB 168/01.

Firstly, the facts in the cases are not similar. This case involves “discontinued” pipeline and Board Order MGB 168/01 involved “pipe attached to a non-producing well”. The subject pipeline is not attached to a non-producing well thus not meeting the first criteria for additional depreciation. Board Order MGB 168/01 interpreted the meaning of non-producing well to include an abandoned well. It is important to note the definition of non-producing has been changed in the year of this case as well. The MGB does not comment on the impact of this change in definition since it was not argued nor is germane to this case. More importantly this case deals with “discontinued pipe” which has a specific meaning and is recorded as such at the AEUB and receives additional depreciation. There is clearly a specific procedure for applying additional depreciation to discontinued pipeline which in this case the DLA correctly followed. Thus, the fact scenario in Board Order MGB 168/01 is different from the case at hand.

Conclusion

The MGB believes that the subject property was assessed correctly and in a fair and equitable manner. The evidence that was raised did not seriously challenge the correctness of the assessment. There was no evidence raised that would suggest that the assessment of this property did not meet the requirements of equity within a standardized system. Under the circumstances, the assessment is fair because the Complainant has chosen not to register the pipeline as discontinued and cannot rely on additional depreciation being applicable on the basis that the Blind End of the pipeline negates its utility. Utility is not a relevant consideration under the current legislative scheme for determining if additional depreciation is applicable. It is the duty of the MGB to determine if the legislation was applied in a fair, equitable and correct fashion by the assessor in preparing the assessment for the subject property. It is not the role of the MGB to determine if the procedures that must be followed in the Act, Manual, or Guidelines are themselves fair or equitable.

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No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 17th day of September 2003.

MUNICIPAL GOVERNMENT BOARD

(SGD) A. Knight, Presiding Officer

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APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Melodie Merrick	Agent from Assessment Advisory Group, representing the Complainant
Carol Zukiwski	Solicitor from Brownlee Fryett, representing the DLA, Respondent
Dan Driscoll	Manager, Assessment Services Branch for Respondent
Michael Gerald Moffat	Pipeline Engineering Specialist for Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB

Exhibit 1C.	Complaint Information
Exhibit 2C.	Additional Complaint Information
Exhibit 3C.	Rebuttal of the Complainant
Exhibit 4R.	Volume of Documents of the DLA
Exhibit 5R.	Legal Argument of the DLA