

BOARD ORDER: MGB 135/07

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

AND IN THE MATTER OF COMPLAINTS respecting linear property assessments for the 2007 (tax year) filed by Northern Sunrise County.

BETWEEN:

Northern Sunrise County as represented by Emery Jamieson LLP - Complainant

-and-

Alberta Ministry of Municipal Affairs and Housing, Designated Linear Assessor for the Province of Alberta – Respondent

BEFORE:

Members:

C. Bethune, Presiding Officer
L. Atkey, Member
T. Robert, Member

Case Manager:

S. Sexton

Upon notice being given to the affected parties and property owners, a hearing was held in the City of Edmonton, in the Province of Alberta on October 2, 2006. The matters before the MGB are the 2007 tax year linear assessment complaints detailed by issue category in Appendix “C” of this Board Order. All other complaints were withdrawn at the beginning of the hearing and not considered further by the MGB. The MGB is authorized to hear complaints regarding linear property assessments under section 488(1)(a) of the *Municipal Government Act* (the Act).

Appendices “A” and “B” list the witnesses and legal counsel appearing before the MGB in this matter and the documents received and considered by the MGB.

OVERVIEW

This Order concerns the assessments of certain oil and gas wells and pipelines located in Northern Sunrise County. The Complainant argues that the Designated Linear Assessor (DLA) should have corrected the assessments for 30 wells after receiving evidence that they are based on incorrect

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data from the Alberta Energy and Utilities Board (EUB). There is one pipeline property under complaint which the Complainant argues was constructed and in use during the relevant assessment period; however, no assessment was prepared by the DLA for the pipeline. The Complainant requests that an assessment be prepared for the pipeline, and that revised assessments be issued for the wells under complaint, taking into account the correct physical characteristics of these wells.

The DLA took no position as to the complaint and did not attend the present hearing.

BACKGROUND

Parties

The Complainant is a municipality in northern Alberta with oil and gas wells within its boundaries. The Respondent is the Alberta Ministry of Municipal Affairs and Housing (Ministry). The DLA is a Ministry employee designated by the Minister under section 292(1) of the Act to prepare linear assessments in the Province of Alberta. Although the DLA is responsible for the preparation of the assessment, the municipality in which the assessed property is located is responsible for setting the tax rate on assessed property, as well as calculating the taxes payable, and collecting the taxes.

At a previous preliminary hearing the DLA indicated that it would not actively oppose the complaint, nor would it agree to change the assessments or issue new assessments for the properties that are the subject of the complaint (see DL 074/07). The DLA did not file written submissions with the MGB, nor did it attend the present hearing to make argument or give evidence.

Role of EUB Records in Preparing Linear Property Assessments

The DLA assesses linear property (including wells and pipelines) according to standards and procedures identified in the *Matters Relating to Assessment and Taxation Regulation* (MRAT) by reference to the Minister's Guidelines. The Minister's Guidelines assign assessment formulas to wells using a process that begins with well codes and production statistics found in the records of the EUB. The four relevant EUB well status classification codes are: "type" (e.g. observation or farm), "mode" (e.g. producing or abandoned), "fluid" (e.g. oil, gas, or bitumen), and "structure" (e.g. number of zones). Each of these characteristics has a 2-digit EUB code. Combining the four 2-digit codes for each characteristic produces an eight-digit EUB classification code for each well.

The Guidelines use the EUB's eight-digit well status code and production records to assign "well status descriptions" for assessment purposes. These descriptions include "drilled and cased", "crude oil flowing", "crude oil pumping", "crude bitumen", "gas", "water" and "injection/disposal/storage". Wells are then assessed based on their status descriptions by reference to corresponding tables and formulas set out in the Guidelines.

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As the foregoing description suggests, EUB data plays an important role in determining linear assessments. Therefore, the accuracy and upkeep of that data also affects the assessments. Much of the relevant data is generated by linear property operators, who provide the EUB with information during the well licensing process and report status changes and production information on an ongoing basis. When an operator fails to report status changes to linear property to the EUB, the municipality within which the linear property is situated has limited ability to obtain and report information for the purpose of updating the EUB records, notwithstanding that the municipality is the recipient of the tax dollars resulting from the linear property assessments, and as such has a vested interest in an accurate assessment process. As noted in previous MGB decisions (e.g. MGB 068/06 & MGB 057/07), the EUB can conduct audits and impose penalties where information has not been reported properly. This system encourages compliance and generally keeps EUB records accurate. However, the system does not guarantee that companies will provide accurate and updated information in a timely manner.

Properties under complaint

The Complainant sorted the properties under complaint into two groups:

Group 1: Wells that the Complainant argues have been incorrectly assessed based on EUB well status codes which do not accurately reflect the up to date characteristics of the wells. The Complainant argues that the assessments for these wells ought to be based on their actual physical status on October 31, 2006, since the EUB records driving the assessments are incorrect. This group of properties in the complaint can be further classified into two sub-groups:

- 1(a) – Wells that the Complainant argues should be assessed as “crude bitumen pumping” instead of “crude oil flowing” to reflect their physical status as of October 31, 2006. This group consists of 7 wells identified by their Linear Property Assessment Unit Identifiers (LPAU-IDs); and
- 1(b) – Wells that should be assessed as “crude oil pumping” instead of “crude oil flowing” to reflect their physical status - that is, their use of pumps to generate production as of October 31, 2006. This group consists of 24 wells, or LPAU-IDs, fourteen of which were appealed on similar grounds during prior years and dealt with in MGB 057/07.

Group 2: A pipeline that the Complainant argues was linear property as defined in s. 284(1)(k) (iii) as of October 31st, 2006 which should have been assessed by the DLA but was not. The Complainant states that this issue arises due to the fact that the EUB records do not accurately reflect the physical existence of the pipeline, and accordingly no license was issued for the pipeline. Therefore, the

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DLA ought to assess the pipeline based on evidence of its actual physical status, a process which is already contemplated by s. 4.002(b) in the Minister's Guidelines in cases where linear property is in existence but is unlicensed.

PRELIMINARY MATTER

Licenses 281748 & 47615

There were two additional linear properties that fell under the Group 2 category of complaint. The Complainant states that these properties are located in Northern Sunrise County, are assessable, but have not been assessed. However, no evidence or argument in support of its position on these two properties was proffered by the Complainant in its written submissions, or at the hearing. During the hearing, the MGB attempted to clarify the complaint status of these two linear properties, and the Complainant indicated that it would follow up in writing with the MGB to clarify its position.

On October 17, 2007, the Complainant sent written correspondence to the MGB stating that License 281748 was withdrawn. The Complainant also indicated that it believed that the DLA was in the process of issuing an amended assessment for License 47615, but that it had not yet received one to date.

Decision and Reasons on Preliminary Matter

The MGB confirms that the Complainant has withdrawn License 281748 from its complaint. With respect to License 47615, the MGB cannot, and will not, direct that the linear property is assessable pursuant to section 492 and 499 of the Act. There was no evidence before the MGB that would allow it to determine whether this property is assessable, or whether the property even exists. The fact that the Complainant has indicated that the DLA may be in the process of issuing an assessment for the property is insufficient evidence to establish that the property is assessable.

ISSUES

Issue 1(a): Was the physical status of Group 1(a) "crude bitumen (pumping)"? If so, does this imply that the EUB data upon which their assessments are based was incorrect, and that the assessments should be changed to reflect "Crude Bitumen" well status descriptions?

Issue 1(b): Was the physical status of Group 1(b) "crude oil pumping"? If so, does this imply that the EUB data upon which their assessments are based was incorrect, and that the assessments should be changed to reflect "Crude Oil Pumping" status descriptions?

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Issue 2: Does the physical status of the pipeline in Group 2 as of October 31, 2006 qualify it as “linear property” under the Act and Guidelines, notwithstanding that it is not licensed and does not appear in the records of the EUB? If so, should an assessment be prepared for this pipeline?

LEGISLATION

In order to decide the above issues, the MGB examined the following key legislative directions.

Municipal Government Act

Section 284 defines linear property and including pipelines, and wells as a subcategory under 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,*

(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,*

Section 291 of the Act gives guidance to the assessor to assess linear property that is completed or capable of being used on October 31 of the assessment year:

Rules for assessing improvements

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

(2) *No assessment is to be prepared*

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

Section 292 of the Act gives a broad outline of the standards, procedure and practice for the assessment of linear property and it is the starting point for this process.

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

(2) Each assessment must reflect

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

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

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

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

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

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

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

Section 293 directs the DLA (as well as municipal assessors) to follow the direction given in the Regulations in a fair and equitable manner.

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

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

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

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

Section 305(1) addresses the remedy available to an assessor where an assessment notice is issued for a linear property and where the notice contains a specified defect.

305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,

(a) the assessor may correct the assessment roll for the current year only, and

(b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.

Section 312 allows for correction of an assessment notice that is incorrect.

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312 If it is discovered that there is an error, omission or misdescription in any of the information shown on an assessment notice, an amended assessment notice may be prepared and sent to the assessed person.

The MGB has the authority to make a change with respect to an error related to the preparation of a linear assessment. The MGB may not use this authority to change an assessment that is fair and equitable.

Decisions of the Board

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

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

(2) The Board must not alter

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

The provisions of s. 499 together with s. 492(c), (f) and (g) give the MGB authority to order a change to an assessment, or to determine whether linear property is assessable, or if it is exempt:

Complaints about 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:

(c) an assessment;

(f) whether the linear property is assessable;

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

Matters Relating to Assessment and Taxation Regulation (AR 220/2004) (MRAT)

In defining the valuation standard, section 8 of MRAT makes reference to processes and procedures set out in the Minister's Guidelines.

8(1) The valuation standard for linear property is that calculated in accordance with the procedures referred to in subsection (2).

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

2006 Alberta Linear Property Assessment Minister's Guidelines

The Guidelines define the following terms that are relevant to the present complaint:

1.001 DEFINITIONS

In the 2006 Alberta Linear Property Assessment Minister's Guidelines

(b) **assessment classification code (ACC)** means the components of linear property as determined by the 2006 Alberta Linear Property Assessment Minister's Guidelines;

(s) **request for information (RFI)** means the report referred to in section 292(3), and the information requested by the assessor pursuant to sections 294(1) and 295(1) of the Act;

The Guidelines establish the process for preparing linear property assessments.

1.002 Process for Calculating Linear Property Assessments

c. Pursuant to section 8(2) of the Regulation, the process for calculating pipeline linear property assessments is found in section 4.000 of the 2005 Alberta Linear Property Assessment Minister's Guidelines.

The various subsections in section 4.000 of the Guidelines set out the valuation standard and procedures for assessing linear property. Relative to the properties in the present complaint, section 4.002 (a) speaks specifically to the role of EUB records in assessing pipelines, whereas 4.002 (c) deals with EUB records relating to wells.

4.002 CHARACTERISTICS AND SPECIFICATIONS

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

(c) For linear property defined in section 284(1)(k)(iii)(C)(D)(E) and (E1.1) of the Act the assessment must reflect the characteristics and specifications contained in the records of the EUB as of October 31 of the assessment year.

Section 4.002 also directs the assessment procedure that is to be followed in the event that a pipeline is not licensed by the EUB and is not contained in the records of the EUB:

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(b) For linear property defined in section 284(1)(k)(A) and (B) of the Act where that linear property is not licensed by the EUB and the linear property is not contained in the records of the EUB, the assessment must reflect the characteristics and specifications contained in the RFI as of October 31 of the assessment year.

Specific directives in the Guidelines also outline the manner in which depreciation is to be granted. In particular, the MGB noted section 4.008 that describes how the ACC is to be determined when linear property has more than one well status description.

4.008 PROCESS FOR DETERMINING THE ACC OF LINEAR PROPERTY DESCRIBED IN 4.002 (C) OR 4.002(D)

- (a) Determine how many well statuses the linear property has.
- (b) If the linear property has:
 - (i) exactly one well status, locate the well status description determined in 4.005 on Table 4.7 to determine the ACC.
 - (ii) more than one well status description, use Table 4.8. From the well status descriptions of the linear property determined in 4.005, identify the well status description that occurs first in Table 4.8.

Also, noted by the MGB in the Guidelines are Tables 4.5, 4.7, 4.8, 4.9, 4.10, 4.12 and Schedule D, which between them assign well status descriptions and formulas for assessment based on the eight-digit EUB well code. For the sake of brevity, these tables are not reproduced in this Board Order.

Issues 1(a) & (b): Was the physical status of the wells Group 1(a) “crude bitumen (pumping)” and was the physical status in Group 1(b) “crude oil pumping”? If so, does this imply that the EUB data upon which the assessments are based was incorrect, and that the assessments for these wells should be changed to reflect either a “Crude Bitumen” or “Crude Oil Pumping” well status description?

Summary of Complainant’s position

The Complainant argued that the physical status of the wells was either “crude oil pumping” (Group 1 (a)) or “crude bitumen pumping” (Group 1(b)) as of October 31, 2006. In support, it pointed to letters from well operators confirming that most of the wells were “pumping” as of the relevant date. It also provided pictures of all of the well sites, other than for LPAU-ID 4413011, due to the fact that it was not allowed to enter onto the site. All of these pictures are dated “June, 2007”. Some of the pictures show that the pump jacks on certain wells in Group 1(b) are actively pumping. The Complainant also provided data which it testified was derived from EUB records through a third party service provider. The records show that the wells were in production as of the relevant date.

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With respect to the wells in Group 1(a), the Complainant stated that in its experience, the viscosity of bitumen is such that it could not be extracted without being pumped. Accordingly, if it was established that a well was physically producing bitumen, it would be incorrect to assign that well any flowing status, including a “crude oil flowing” status. When asked by the MGB how it was able to distinguish between the crude oil wells in its complaint and the crude bitumen wells, the Complainant gave the following examples:

- The license application for a bitumen well will indicate that the well is located in a “heavy oil zone”;
- An “oil-lift” pump is required to assist in the extraction of bitumen. The MGB was referred to LPAU-ID 4066046, picture #5058 in Tab 7 of C-1, which shows an oil-lift pump at the well-site.
- Where bitumen is being produced, it is standard in the industry for those well sites to also have several large storage tanks and burners for the bitumen. This is not characteristic of crude oil well sites. The Complainant referred the MGB to picture 4991 in its materials of the well site for LPAU-ID 4432672, which shows several large storage tanks; and
- The EUB records in its materials indicate that as of October 31, 2006, the wells were producing bitumen. These records were derived through its service provider from the January 2007 “run” of EUB records;

Since the DLA assessed the wells as “crude oil flowing” - and presumably applied the Minister’s Guidelines correctly - the Complainant suggested that the assessments must be based on incorrect EUB records. It requested that the assessments should be corrected to match the true well status of crude bitumen pumping. The Complainant acknowledged that there was no “Crude Bitumen Pumping” well status specified in the Minister’s Guidelines only a “Crude Bitumen” well status. It requested that the wells in this sub-group be assigned the “Crude Bitumen” status and that assessments be changed to accord with this status.

With respect to the wells in Group 1 (b), it was the Complainant’s position that not only is there evidence before the MGB to show that these wells are all pumping crude oil as of October 31, 2006, but 14 out of 24 of the wells in this category were previously part of the 2006 (tax year) complaint because they were assessed as being “crude oil flowing”. MGB 57/07 ordered that all of these wells be changed to represent the correct “crude oil pumping” status for the 2006 tax year assessments. The Complainant’s witness testified that there has been no physical change to these wells since 2006 (i.e. they are still crude oil pumping) but the Respondent has once again incorrectly assessed the wells as “crude oil flowing” despite the previous year’s direction in MGB 057/07.

The Complainant also argued that having been presented with evidence that all of the wells in Groups 1(a) and (b) were physically pumping rather than flowing on October 31, 2006, and that some of the wells were bitumen wells, the DLA had a responsibility to either correct the assessments or issue requests for information from the property owners to confirm the actual physical status of the wells as of October 31st. In this regard, it noted that property owners have a

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duty under the Act and the Minister's Guidelines to respond to information requests from the DLA, but not to requests from municipalities. It also noted the MGB's decisions in MGB 068/06 and MGB 057/07, dealt with many of the same issues and many of the same properties. In those decisions, the MGB noted that a municipality cannot easily initiate changes in the EUB record. Thus, where a municipality brings forward undisputed evidence of an error, a decision not to exercise the powers available under the Act to correct the assessment or request further information from the operator to determine the true status of the property is not a fair and equitable application of the procedures set out in the Minister's Guidelines. In light of the evidence now before MGB that the wells were in fact "crude oil pumping" or "bitumen (pumping)" as of October 31, 2006, the Complainant requested that the assessments be changed to reflect well statuses of "crude oil pumping" or "crude bitumen", following the same reasoning adopted in MGB 068/06 and MGB 057/07.

Findings

- The physical status of the wells in question was pumping as of October 31, 2006.
- The most appropriate status description for the Group 1(a) wells under the Minister's Guidelines was most likely Crude Bitumen.
- The most appropriate status description for the Group 1(b) wells under the Minister's Guidelines was most likely Crude Oil Pumping.

Reasons

As with the 2004, 2005, and 2006 complaints, the Complainant presented compelling evidence that the subject wells were most likely physically pumping as of October 31, 2006. This evidence included EUB data establishing that all of the subject wells were producing as of October 31, 2006. The evidence also included letters from well operators concerning most of the wells in Groups 1(a) and (b), as well as personal observations of Mr. Gagnon and Mr. Pulishy.

Group 1(a)

With respect to the six Group 1(a) properties, the MGB notes that the Complainant has requested a status description for assessment purposes of "crude bitumen pumping". "Crude bitumen pumping" does not appear under Table 4.5 or other relevant Tables in the Minister's Guidelines as a well status description, and seems to be a phrase unique to the EUB (see, for example, the first spreadsheet under Tab 5 of C-1). The closest description used in Table 4.5 of the Minister's Guidelines is simply "crude bitumen". The MGB confirmed during the hearing that the Complainant's request is that the Group 1(a) wells be assigned the "crude bitumen" status description listed in Table 4.5 instead of "crude oil flowing".

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The evidence presented by the Complainant was clear that the Group 1(a) wells are bitumen wells for which an oil-lift pump is at the well site. Additional evidence that the wells are pumping bitumen includes EUB status description of “bitumen pumping” for four of the six Group 1(a) wells (LPAU-IDs 3492115, 3730680, 3731088, and 3730491), taken from the January 2007 “run” of the EUB records. Furthermore, the letters from well operators themselves also establishes the pumping status of the wells, and the MGB accepts the authenticity of the letters based on the credible testimony given by the Complainants’ two witnesses.

Whether crude oil or bitumen was produced, the “flowing” aspect of the DLA’s status description for assessment purposes (“crude oil flowing”) for the above four wells would appear to be incorrect. The EUB status description shown in Tab 6 of C-1 suggests that the product was in fact bitumen and that the wells were on production by October 31, 2006, and no evidence was presented to the contrary. The MGB is therefore satisfied that these four wells were producing bitumen as of October 31, 2006.

The EUB status description for LPAU-ID 4432672 indicates “bitumen flowing”, however, the testimony of Mr. Gagnon, whom the MGB finds to be a credible witness, together with the pictures of this well in Tab 7 of C-1, and the signed letters from the owner of this well are indicative of the fact that this well was pumping as of October 31, 2006. At any rate, on the evidence before it, the MGB is satisfied that this was a crude bitumen well that was in use as of October 31, 2006, and therefore should be assessed based on a “crude bitumen” well status.

LPAU-ID 4066046 indicates an EUB status of “Drain”. The MGB accepts that both the production records and the letter from the owner of this well indicate that this well was producing and pumping on October 31, 2006, but this does not identify what fluid it was producing (i.e. crude oil or crude bitumen). Nor is there an indication from the Complainant’s EUB derived data that this was a crude bitumen well on October 31, 2006. However, the testimony of both Mr. Gagnon and Mr. Pulishy was that this is a crude bitumen well. When questioned by the MGB about distinguishing between wells that were pumping crude bitumen versus wells that were pumping crude oil, one factor cited was that an “oil-lift” pump is required for bitumen pumping wells. Picture # 5058 shows an oil-lift pump at the well site of LPAU-ID 4066046. In light of this evidence and the fact that no evidence to the contrary was before it, the MGB accepts that this was a crude bitumen well on October 31, 2006.

In view of the totality of the evidence before it, MGB is satisfied that the circumstances warrant revising the assessments for each of the well LPAU-IDs in group 1(a) by substituting a “crude bitumen” well status description for “crude oil flowing”.

Group 1(b)

Mr. Pulishy, whom the MGB finds to be a credible witness, testified that he had visited all of these well sites personally, with the exception of the Duvernay well site for LPAU-ID 4413011. He noted no change in status between the summer of 2006 and the summer of 2007 for 14 out of 24 of

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the wells in this complaint category. The MGB ordered in 2006 that the assessments for these 14 wells be changed to reflect a “crude oil pumping” well status, as they were previously assessed based on a “crude oil flowing” status, much the same as has been done by the DLA in 2007. The MGB notes that the Complainant’s evidence shows “crude oil flowing” EUB status for these 14 wells, notwithstanding that the letters from the operators’ indicate that the wells are pumping. These wells were pumping last year, and the evidence of the Complainant is that the physical status has not changed this year. No evidence to the contrary was raised. The evidence strongly suggests that these 14 wells were assessed based on information in the records of the EUB that does not correctly capture that the physical status of these wells was “pumping” as of October 31, 2006. Accordingly, these 14 wells should be assessed using the status description “crude oil pumping”.

There are 10 wells in Group 1(b) that are new to this year’s complaint (i.e. that were not before the MGB in MGB 057/07). Five of these wells (LPAU-IDs 4414105, 4420996, 4424391, 4438133, and 4437739) show a “CR-OIL PUMP” status in the EUB derived evidence of the Complainant contained in Tab 6 of C-1. The EUB evidence also shows that all of these wells were producing by early October, 2006. The letters from the well owners confirm that the wells were pumping on or before October 31, 2006. The MGB is satisfied that these five wells had a physical status of “pumping” on or before October 31, 2006, and should be assessed using the status description “crude oil pumping”.

As is the case with all of the wells under complaint in Group 1 (b), there are signed letters from the production foreman for each of the various owners of the remaining five wells in Group 1(b) (LPAU-IDs 3126130, 3490988, 4426415, 4413011 & 1909625). The signed letters indicate that the wells were physically pumping on October 31, 2006. Further, the evidence of Mr. Pulishy was that he had visited and photographed four of these five wells during the summer of 2007, and – although his observations and photographs were made after the assessment date – they are consistent with a pumping well status as of October 31, 2006. There were no pictures of the well site for LPAU-ID 4413011, as the owner did not permit Mr. Pulishy access to the well site. However, there is a signed letter from the production foreman for the owner of the well, confirming that the well was pumping on or prior to October 31, 2006. In the face of this evidence and without any evidence to the contrary before it, the MGB is satisfied that the physical status of these five wells was most likely pumping on or prior to October 31, 2006, and accordingly, the wells should be assessed using the status description “crude oil pumping”.

Summary

The evidence presented establishes that the wells in Group 1(a) and (b) were attached to an operating pump and were in production and pumping as of October 31, 2006. These wells were classified by the Respondent itself as crude oil wells; accordingly, it is reasonable to conclude they were producing either oil, or, based on the compelling evidence of the Complainant, bitumen, and using a pump to do so. Such circumstances strongly suggest that the property description used for assessment purposes was incorrect and that it is based on a mistake at some point in the process –

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either in the EUB records or the application of the well status description by the DLA. If the DLA applied the correct process, the most likely explanation for the incorrect property tax status description is that the EUB data elements relied upon needed correction. A fair application of the procedures in the Minister's Guidelines requires that the assessment be corrected to reflect the correct status description.

Issue 2: Does the physical status of the pipeline in Group 2 as of October 31, 2006 qualify it as "linear property" under the Act and Guidelines, notwithstanding that it is not licensed and does not appear in the records of the EUB? If so, should an assessment be prepared for this pipeline?

Summary of Complainant's position

The Complainant indicated that it had located a gas well owned by Vermilion Resources Ltd. (LPAU-ID 1836540) within the boundaries of Northern Sunrise County for which there is a pipeline that the Complainant believes is connected to the well. The pipeline has no license number, and is not registered in the records of the EUB. No assessment has been prepared by the DLA for the pipeline. However, the Complainant argues that the pipe physically exists, was in use on or before October 31, 2006, and therefore should have been assessed, notwithstanding that it is unlicensed and does not appear in the records of the EUB.

In support of its position, the Complainant stated that Mr. Gagnon had contacted the operator of the well, who confirmed that the pipeline in question was attached to the above well and transmitting gas on October 31, 2006. To corroborate this evidence, the Complainant pointed to Tab 1-D of its submissions which contain spreadsheets derived from the assessment information of the Respondent. That information shows that the well produced 4896.6 cubic meters of gas during the 2006 assessment year.

Mr. Gagnon stated that he was also informed by the owner that the pipeline is a steel pipe, three inches in diameter, approximately one mile long, with a from location of LSD 12, Section 10, Township 82 Range 9, West of the 5th meridian to LSD 1, Section 9, Township 82 Range 9, West of the 5th meridian. According to the owner, the pipeline at one point had been deactivated, and subsequently reactivated but not registered with the EUB. He indicated that as of July, 2007, the pipeline was still not registered with the EUB.

The Complainant argued that this pipeline is linear property as per section 284(k) of the Act. Although it is not licensed and its status is not contained in the records of the EUB, it is still assessable, and a process is identified in Section 4.002(b) of the Minister's Guidelines for assessing unlicensed pipelines such as this. Accordingly, once evidence was brought to the attention of the DLA indicating that this pipeline physically existed, it was incumbent on the DLA to exercise its discretion and send out an RFI to the owner in accordance with s. 295 of the Act and prepare an assessment based on the RFI as directed by the Act and the Minister's Guidelines.

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The Complainant requested that the MGB direct that the property is assessable and that the DLA prepare an assessment for the pipeline based on the direction in the Minister's Guidelines.

Findings

The pipeline at LSD 12, Section 10, Township 82, Range 9, West of the 5th meridian to LSD 1, Section 9, Township 82, Range 9, West of the 5th meridian is linear property that was in use as of October 31st, 2006 and was therefore assessable.

Reasons

Jurisdiction of the MGB

Section 492(1) of the Act specifies that a complaint about an assessment for linear property may be about certain enumerated matters (including the assessability of linear property), *as shown on the assessment notice*. In this case, no assessment notice was prepared because the pipeline was not assessed. The jurisdictional question that must be addressed is whether the MGB has authority to hear and decide the complaint notwithstanding that the subject matter of the complaint does not appear on an assessment notice.

Pursuant to s. 499(1)(b) and s. 492(1)(f) of the Act, the MGB has jurisdiction to determine whether linear property is assessable. The fact that no assessment notice was prepared for linear property does not detract from the MGB's jurisdiction to hear this matter, given the clear intention in the Act that all operational linear property (which includes pipelines) is to be assessed. In this case, it appears to the MGB that the DLA has determined that the pipeline is not assessable, as it has not prepared an assessment notice. Only through hearing the merits of the present complaint, could the assessability of this pipeline be determined. Accordingly, the MGB finds that it has jurisdiction to hear and determine whether the pipeline in question is assessable, notwithstanding that there has been no assessment notice prepared.

Is the Pipeline Assessable?

The preponderance of evidence, which was uncontested at the hearing, clearly demonstrates the following facts, which the MGB accepts:

1. There is a producing gas well (LPAU-ID 1836540) in Northern Sunrise County;
2. A pipeline is attached to this gas well;
3. The pipeline is located within Northern Sunrise County;
4. The pipeline is in use;
5. The pipeline is not licensed and is not represented in the records of the EUB; and
6. No assessment has been prepared for the pipeline.

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Pipelines are linear property as per s. 284(k)(iii) of the Act. Section 292 of the Act specifies that assessments for linear property *must* be prepared by the assessor. As the evidence shows that the pipeline was complete and in use as of Oct 31, 2006, the provisions of s. 291(2) of the Act do not exclude this pipeline from assessment.

Section 293 of the Act directs that the assessor, in preparing the assessment, *must* in a fair and equitable manner apply the valuation standards set out in the Regulations, and follow the procedures set out in the Regulations. The Regulations direct that the assessor *must* follow the procedures set out in the Alberta Property Assessment Minister's Guidelines.

As was argued by the Complainant, section 4.002 (b) of the Minister's Guidelines clearly sets out the process that is to be followed in the case of an unlicensed pipeline not registered with the EUB. There is no ambiguity in that direction:

“...where that linear property is not licensed by the EUB and the linear property is not contained in the records of the EUB, the assessment must reflect the characteristics and specifications contained in the RFI as of October 31 of the assessment year.”[Underlined Emphasis Added]

This procedure mandates that an operational unlicensed pipeline not appearing in the records of the EUB must be assessed, and the assessment must be based on an RFI. It is consistent with s. 291(2) which directs that an assessment must be prepared for operational linear property. The DLA has authority to request a report about linear property (defined as an RFI under s. 4.001 of the Guidelines) from an owner under section 292(3) of the Act. When read in isolation, s. 292(3) might appear to give the DLA discretion to choose whether or not it will request an RFI from an owner about a particular linear property:

“(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.”

However, having considered the present circumstances and the relevant provisions of the Act, Regulations, and Guidelines, the MGB is of the view that the Respondent does not, and did not in this case, have discretion to choose whether or not to prepare an assessment for an unlicensed pipeline not registered with the EUB, despite the permissive language used in s. 292(3).

The direction in the Act, Regulations, and Guidelines requires the assessor to prepare an assessment for unlicensed, unregistered pipeline based on an RFI. The DLA could only do so if it had first requested an RFI as it is authorized to do under s. 293 of the Act. When the DLA is shown that a pipeline exists, is complete and capable of use, but is not licensed and is not found in the records of the EUB, the DLA *must* request an RFI to confirm the status of the pipeline, to ensure that an assessment is prepared as required by s. 4.002 (b) of the Guidelines. The DLA in

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this case failed or refused to do so, and in that, failed to follow mandatory legislative direction to prepare an assessment for operational, albeit unregistered and unlicensed, linear property

In adopting this view, the MGB had regard for Driedger's modern principle of statutory interpretation as set out in *Construction of Statutes*, (2nd ed.) and repeated often in case law and other literature, namely: "the words of the Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament". The provisions in s. 292(3) cannot be read in isolation. Regard must be given to the clear and overriding direction in the Act that all operational linear property *must* be assessed fairly and equitably, together with the specific direction in the Guidelines that unlicensed pipeline must be assessed by way of an RFI when the pipeline is not represented in the records of the EUB. In this instance, the MGB finds that it was incumbent on the DLA to request an RFI from the owner so that it could carry out its legislated duties as an assessor and prepare an assessment based on the RFI.

The evidence before the MGB suggests that the pipeline is assessable, and should be assessed by the DLA in accordance with the applicable procedures set out in the Minister's Guidelines.

DECISION

Issue 1:

1. The complaint is allowed and the Respondent is directed to change the assessments using the status description "Crude Bitumen" for the Group 1(a) properties and "Crude Oil Pumping" for the Group 1(b) properties.

Issue 2:

2. The unlicensed pipeline connected to the well identified as LPAU-ID 1836540, with a from location of LSD 12, Section 10, Township 82 Range 9, West of the 5th meridian and a to location of LSD 1, Section 9, Township 82 Range 9, West of the 5th meridian is linear property and is therefore assessable. The Respondent is directed to prepare an assessment for this linear property for the 2007 tax year in accordance with s. 4.002 (b) of the Minister's Guidelines.

Dated at the City of Edmonton, in the Province of Alberta, this 9th day of November, 2007.

MUNICIPAL GOVERNMENT BOARD

T. Robert, Member

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APPENDIX "A"

APPEARANCES

NAME	CAPACITY
K. Hurlburt	Emery Jamieson LLP, Legal Counsel for the Complainant
M. Gagnon	Assessor, Northern Sunrise County, Complainant
R. Pulishy	Deputy Assessor, Northern Sunrise County, Complainant

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
1C	Materials of the Complainant, Northern Sunrise County

APPENDIX "C"

2007 (tax year) Linear Property Assessment Complaints filed by Northern Sunrise County

GROUP 1(a) PROPERTIES – Assessed as Crude Oil Flowing, requested as Crude Bitumen

Municipality MA-ID	Municipality Name	Assessee MA-ID	Assessee Name	LPAU-ID
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	4066046
0496	Northern Sunrise County	23305	Penn West Petroleum Ltd.	3492115
0496	Northern Sunrise County	23305	Penn West Petroleum Ltd.	3730680
0496	Northern Sunrise County	23305	Penn West Petroleum Ltd.	3731088
0496	Northern Sunrise County	23305	Penn West Petroleum Ltd.	3730491
0496	Northern Sunrise County	23942	Shell Canada Ltd.	4432672

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GROUP 1(b) PROPERTIES – Assessed as Crude Oil Flowing, requested as Crude Oil Pumping

Municipality MA-ID	Municipality Name	Assessee MA-ID	Assessee Name	LPAU-ID
0496	Northern Sunrise County	3777	Onefour Energy Ltd.	4414105
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1950071*
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	3126130
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1890239*
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1911807*
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	2748052*
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1833729*
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1925833*
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	3128628*
0496	Northern Sunrise County	21716	FET Resources Ltd.	1928391*
0496	Northern Sunrise County	3768	Dolomite Energy inc.	4420996
0496	Northern Sunrise County	3768	Dolomite Energy inc.	4424391
0496	Northern Sunrise County	3768	Dolomite Energy inc.	3490988
0496	Northern Sunrise County	20969	Celtic Exploration Ltd.	2098725*
0496	Northern Sunrise County	20969	Celtic Exploration Ltd.	2098723*
0496	Northern Sunrise County	20969	Celtic Exploration Ltd.	2098721*
0496	Northern Sunrise County	3768	Dolomite Energy inc.	4438133
0496	Northern Sunrise County	3775	Arsenal; Energy Inc.	4437739
0496	Northern Sunrise County	20969	Celtic Exploration Ltd.	2099631*
0496	Northern Sunrise County	22169	Husky Oil Operations Ltd.	2101481*
0496	Northern Sunrise County	3460	Titan Exploration Ltd.	4426415
0496	Northern Sunrise County	21716	FET Resources Ltd.	1909625
0496	Northern Sunrise County	21490	Duvernay Oil Corp.	4413011
0496	Northern Sunrise County	21716	FET Resources Ltd.	1860088*

* Wells before the MGB in 2006 previously assessed as “Crude Oil Flowing” and ordered changed to “Crude Oil Pumping” in MGB 057/07.

GROUP 2 PROPERTIES – Linear Property for which no assessment has been prepared by the DLA

Municipality MA-ID	Municipality Name	Assessee MA-ID	Assessee Name	Licence No.
0496	Northern Sunrise County	22169	Vermilion Resources Ltd.	**
0496	Northern Sunrise County	24666	Celtic Exploration Ltd.	47615
0496	Northern Sunrise County	24666	Blackrock Ventures Ltd.	281748 (W)

** No license designated to this well by the EUB.
(W) Withdrawn following the Merit Hearing