

**BOARD ORDER: MGB 151/03**

**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 operators.

**BETWEEN:**

Penn West Petroleum Ltd. - 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:**

Members:

R. Scotnicki, Presiding Officer

L. Lundgren, Member

A. Knight, 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 February 26, 2003.

These are complaints filed with the Municipal Government Board (MGB) by Penn West Petroleum Ltd. from the linear assessment notices issued by the Respondent Designated Linear Assessor (DLA) from the 2001 assessment year, 2002 tax year. These complaints are for Permanent Property Inventory Identifiers (PPI-IDs) 699598 in the M.D. of Wainwright, 655018 in the M.D. of Provost, and 630232 in the County of Wetaskiwin. These are all pipe properties owned or operated by the Complainant Penn West Petroleum Ltd.

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### **PRELIMINARY MATTERS**

#### **PPI-ID 699598**

The first preliminary issue relates to PPI-ID 699598 in the M.D. of Wainwright. The Complainant asked the DLA to remove the assessment for this property because the project was not built. Alternatively, they requested that the MGB in its decision give the property a zero assessment. In response to this request the DLA noted that the rebuttal documents (Exhibit 2C) confirmed the improvement was never built. Therefore, the DLA recommended the assessment be removed providing the Complainant requested by March 30, 2003 that the Alberta Energy and Utilities Board (AEUB) amend its records. The Complainant accepted the conditions of the recommendation. The MGB approved the recommendation.

After the hearing the MGB received from the Complainant a letter dated March 12, 2003 providing the AEUB documentation as requested by the Respondent. PPI-ID 699598 has been included in a list of joint recommendations on pipe related to an abandoned well which the MGB confirmed in its Notice of Decision of July 28, 2003.

#### **New Evidence**

The second preliminary matter pertained to the submission of new evidence by the Complainant after the established deadline. The DLA asked the MGB to strike Exhibit 2C, the Complainant's rebuttal submission, from the MGB record. The alleged new evidence was provided to the DLA and the MGB after the DLA's submission of December 6, 2002. The submission was well after the October 28, 2002 date by which the Complainant had been directed to make its submission of evidence, arguments and documents. The DLA claimed that the Complainant, in its rebuttal, tried to make the case that it should have made in October at the time of its original submission, Exhibit 1C. It was the position of the DLA that with the Complainant submitting new evidence in its rebuttal the rules of natural justice are contravened, because the DLA did not have a chance to respond to the evidence of the Complainant. Therefore, the new evidence in Exhibit 2C should be struck.

The MGB asked the DLA to review Exhibit 2C to determine if they objected to all the documents contained in the submission. In response the DLA stated that it objected only to tabs one, two, three, six and seven.

#### **Decision on New Evidence**

It is the decision of the MGB that tabs four, five and eight of Exhibit 2C be allowed as evidence as the DLA does not object to the submission of these documents. These documents are to continue as

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Exhibit 2C. Consequently, it is the decision of the MGB that tabs 1, 2, 3, 6 and 7 not be allowed as evidence, because they were provided to the other party and the MGB after the established disclosure deadline. These tabs and the corresponding documents were removed from the exhibit.

### Reasons For Ruling on New Evidence

The Complainant was given full opportunity to prepare and present its case and did not do so within the timelines set out by the MGB. Further, the Complainant did not ask the MGB for a time extension for making its submission. By submitting new evidence after the DLA had already made its case in defending its assessment, the Complainant contravened the tenets of natural justice.

### BACKGROUND

The MGB received an Application for Linear Assessment Property Complaint from the Complainant on April 12, 2002. This application listed a total of 44 properties under complaint.

The MGB held a hearing on June 25, 2002 at which the panel decided on three properties (see paragraph "Recommendation") and postponed those properties under complaint which related to issues of pipe to abandoned well or pipe usage.

In documents dated October 11, 2002 the Complainant provided to the MGB detailed information supporting their complaints. The documents presented production information and maps of the properties under complaint.

A preliminary hearing was held before the MGB on October 15, 2002 to establish exchange and hearing dates and to deal with any other preliminary matters that were in dispute between the parties. The parties agreed to specific dates for exchange of documents and the hearing. The hearing was scheduled to take place in Calgary on February 26, 2003.

### Withdrawn PPI-IDs

The MGB received a letter from the Complainant dated December 17, 2002 indicating they wished to withdraw three of the linear properties under complaint. That same day, the MGB confirmed this request and issued a Notice of Withdrawal to the parties. This Notice confirmed the withdrawal of the following properties under complaint.

| ACode | Assessee Name            | MCode | Municipality Name | PPI-ID #               |
|-------|--------------------------|-------|-------------------|------------------------|
| 0BP8  | Penn West Petroleum Ltd. | 0377  | Clearwater County | 583922, 584668, 583917 |

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On September 19, 2003 the Complainant withdrew another property under complaint. On September 24, 2003 the MGB confirmed the following withdrawal.

| <b>ACode</b> | <b>Assessee Name</b>     | <b>MCode</b> | <b>Municipality Name</b> | <b>PPI-ID #</b> |
|--------------|--------------------------|--------------|--------------------------|-----------------|
| 0BP8         | Penn West Petroleum Ltd. | 0258         | M.D. of Provost          | 655018          |

The following PPI-IDs are withdrawn following an agreement between the parties (see paragraph "Agreement" for details) and confirmed in a Notice of Withdrawal dated July 28, 2003.

| <b>ACode</b> | <b>Assessee Name</b>     | <b>MCode</b> | <b>Municipality Name</b> | <b>PPI-ID #</b>        |
|--------------|--------------------------|--------------|--------------------------|------------------------|
| 0BP8         | Penn West Petroleum Ltd. | 0505         | M.D. of MacKenzie        | 693041, 693044, 746745 |
| 0BP8         | Penn West Petroleum Ltd. | 0511         | M.D. of Northern Lights  | 639630, 694241         |
| 0BP8         | Penn West Petroleum Ltd. | 0377         | Clearwater County        | 594734                 |
| 0BP8         | Penn West Petroleum Ltd. | 0258         | M.D. of Provost          | 594427                 |
| 0BP8         | Penn West Petroleum Ltd. | 0110         | Flagstaff County         | 621971, 654304         |
| 0BP8         | Penn West Petroleum Ltd. | 0383         | Brazeau County           | 562391                 |

### Agreement

Prior to issuing a decision for the February 26 hearing, on April 30, 2003, the MGB received a comprehensive document relating to the linear property complaints of several oil and gas companies, including the Complainant. This document represented an agreement between the DLA and the companies as to certain 2002 (tax year) linear property complaints. In this agreement, the DLA made recommendations to reduce the assessment for 27 of the linear properties owned/operated by the Complainant. The MGB accepted this recommendation on June 5, 2003 and on July 28, 2003 issued two Notices to the Complainant. The Notice of Withdrawal confirmed the agreement to withdraw certain properties under complaint and the Notice of Decision confirmed the assessment reduction of several other properties. The joint recommendation for PPI-ID 605318 in the M.D. of Brazeau was not included in the Notice of Decision because the property was not submitted as a complaint to the MGB and is, therefore, not before the MGB.

The assessment for the following properties was reduced by the Notice of Decision of July 28, 2003.

| <b>ACode</b> | <b>Name of Owner-Operator</b> | <b>MCode</b> | <b>Municipality Name</b> | <b>PPI-ID #</b> |
|--------------|-------------------------------|--------------|--------------------------|-----------------|
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0110         | FLAGSTAFF COUNTY         | 616140          |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0110         | FLAGSTAFF COUNTY         | 621981          |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0110         | FLAGSTAFF COUNTY         | 621982          |

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| <b>ACode</b> | <b>Name of Owner-Operator</b> | <b>MCode</b> | <b>Municipality Name</b>      | <b>PPI-ID #</b>  |
|--------------|-------------------------------|--------------|-------------------------------|------------------|
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$70,120</b>  |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0258         | M.D. OF PROVOST NO. 52        | 594422           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0258         | M.D. OF PROVOST NO. 52        | 594423           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0258         | M.D. OF PROVOST NO. 52        | 594424           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0258         | M.D. OF PROVOST NO. 52        | 616140           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0258         | M.D. OF PROVOST NO. 52        | 655019           |
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$58,170</b>  |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0336         | M.D. OF WAINWRIGHT NO. 61     | 624750           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0336         | M.D. OF WAINWRIGHT NO. 61     | 693558           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0336         | M.D. OF WAINWRIGHT NO. 61     | 699595           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0336         | M.D. OF WAINWRIGHT NO. 61     | 699598           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0336         | M.D. OF WAINWRIGHT NO. 61     | 699600           |
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$172,620</b> |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0348         | COUNTY OF WETASKIWIN NO. 10   | 624900           |
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$4,170</b>   |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0377         | CLEARWATER COUNTY             | 579799           |
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$3,400</b>   |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0383         | BRAZEAU COUNTY                | 558952           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0383         | BRAZEAU COUNTY                | 559788           |
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$65,760</b>  |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0465         | SPECIAL AREAS BOARD #4        | 685634           |
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$4,960</b>   |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0505         | M.D. OF MACKENZIE NO. 23      | 693040           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0505         | M.D. OF MACKENZIE NO. 23      | 693043           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0505         | M.D. OF MACKENZIE NO. 23      | 695917           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0505         | M.D. OF MACKENZIE NO. 23      | 747671           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0505         | M.D. OF MACKENZIE NO. 23      | 747676           |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0505         | M.D. OF MACKENZIE NO. 23      | 747685           |
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$348,740</b> |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0506         | M.D. OF BIG LAKES             | 693935           |
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$9,280</b>   |
| 0BP8         | PENN WEST PETROLEUM LTD.      | 0511         | M.D. OF NORTHERN LIGHTS NO 22 | 671266           |
|              |                               |              | <b>Reduce Assessment by</b>   | <b>\$6,990</b>   |

**Recommendation**

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At a hearing of June 25, 2002 a panel of the MGB made its decision on the following properties which were confirmed in the Notice of Decision of July 11, 2003.

| <b>Assessee</b>                 | <b>Municipality</b>      | <b>PPI-ID #</b> | <b>Original Assmnt Feb. 28/02</b> | <b>Amended Assmnt June 5/02</b> | <b>MGB Decision</b> |
|---------------------------------|--------------------------|-----------------|-----------------------------------|---------------------------------|---------------------|
| Penn West Petroleum Ltd. – 0BP8 | Clearwater County - 0377 | 756287          | \$1,122,520                       | \$ 16,830                       | \$ 16,830           |

In the same Notice of Decision the following PPI-IDs were returned to the Complainant because the MGB has determined that it does not have jurisdiction to hear complaints located on Indian Reserves or Metis Settlements.

| <b>Assessee</b>                 | <b>Municipality</b>             | <b>PPI-ID #</b>   |
|---------------------------------|---------------------------------|-------------------|
| Penn West Petroleum Ltd. – 0BP8 | Paddle Prairie Metis Settlement | 603868 and 603872 |

### Outstanding Items

The MGB further advised the parties that, notwithstanding the recommendations and withdrawals made before, during and after the hearing, the file of the MGB remained open with respect to PPI-ID 630232 in the County of Wetaskiwin. No further correspondence was received from the parties on the remaining property. This Board Order represents the decision of the MGB in relation to this one property.

### PPI-ID 630232

This is the only property being addressed in this decision of the MGB. The linear property is a large freshwater pipe running from a pump station to an injection plant. The reports for the Crystal Waterflood plant show no water receipts at this facility. Further, internal water source reports show nil volumes going through the pump station at the from location of this pipe. The Complainant submitted maps and production reports in their rebuttal which supported these assertions. The pipe is registered as “Operating” at the AEUB.

### OVERVIEW

The Complainant argues that even though the AEUB record shows that the pipe is operational, in fact the pipe is discontinued and that the DLA should prepare the assessment based on the actual utility of the pipe. The Respondent argues that the procedure to base the assessment on the AEUB records is a regulated requirement from which the DLA has no discretion nor should the DLA bestow on the Complainant a benefit for not reporting the actual status of the pipe to the AEUB when others have

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fulfilled the reporting requirement. In addition, the Complainant argues that they only acquired the ownership of the property in the latter part of the year and should therefore not bear all the burden of the taxation for the full year.

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### ISSUES

1. Does a property owner/operator who does not register the status of his pipe with the AEUB as discontinued, have the right to receive additional depreciation?
2. Is there a requirement for the property owner/operator to request a change to the AEUB record?
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 DLA apply the regulations in a proper manner?
4. If the pipe is not capable of being used, should it be assessed as linear property?
5. Should special consideration be given because the property was acquired at the end of the assessment year?
6. Is the fact scenario in MGB 168/01 similar to the subject case?

### LEGISLATION

In deciding this matter the MGB examined the legislative authority contained in the Act, the Regulations, the 2001 Minister's Guidelines for the Assessment of Farmland, Linear Property, Machinery and Equipment, and Railway (Guidelines) and the 2001 Alberta Linear Property Assessment Manual (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 pipes.

*284(1) In this Part...*

*(k) "linear property" means*

*...*

*(iii) pipelines, including*

*....*



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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. For purposes of brevity of this order, Section 298 of the Act is not repeated in this order.

*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. None of those exceptions apply in this case.

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.*

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*(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.*

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 define assessor.

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

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

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).

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 and 293 of the Act 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 the Regulation 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, and 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

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(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 used in the calculation are set out in the Manual. The part of the calculation that is the subject of this hearing is 3.002(d).

3.002 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 2001 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 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 additional depreciation correctly according to Schedule D.

### **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 words has distinctive meanings.

#### **1.005 Pipeline (PL)**

In this 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.

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(h) “Operational” is a pipe status given to linear property by the Alberta Energy and Utilities Board or as determined by the assessor

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 thereunder are met. The question for the present case is whether or not additional depreciation is applicable to the properties because they have been discontinued and fall under the “D” code.

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- 4.000 SCHEDULE D – ADDITIONAL DEPRECIATION
- 4.003 PIPELINE
- 4.003.001 Pipe

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

| <b>Code</b> | <b>Pipe</b>   | <b>Depreciation Factor</b> |
|-------------|---|----------------------------|
| <b>W</b>    | Pipe that has a facility code WE and the from location is within an LSD that has a Non Producing Well | <b>0.10</b>                |
| <b>D</b>    | Discontinued  | <b>0.10</b>                |
| <b>B</b>    | Pipe constructed prior to 1940*   | <b>0.50</b>                |

\* Status declared by each company

With respect to ownership, the MGB looked to the following key directions in the Act which identify the assessed person as the operator of the linear property.

Section 304(1) - the name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

| Column 1 Assessed property | Column 2 Assessed person                 |
|----------------------------|--|
| (i) linear property;       | (i) the operator of the linear property; |

**SUMMARY OF COMPLAINANT’S POSITION**

The Complainant argued that it has never used nor has it altered the state of this line since it was acquired. At present it is not prepared to discontinue the pipe indefinitely by making the appropriate application with the AEUB, because it is a new acquisition and there is uncertainty as to whether the company may want to use this line in the future. At present the Complainant receives no benefits from the pipe, because the pipe serves no function and, therefore, has zero utility.

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 pipe should govern the assessment. The Complainant suggested that the intent of the legislation is that if the pipe is not being utilized, additional depreciation should be applicable. It was put forth that relying solely on the “paperwork” of the AEUB records to determine the status of the pipe is insufficient when this does not reflect the actual status of the pipe. In this situation the reliance on the record to prepare an assessment achieves a result that is inconsistent with the intent of the legislation.

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It was also submitted that previous Board Orders of the MGB (MGB 168/01 and MGB 173/01) have recognized that utility should be a valid consideration for the DLA when preparing an assessment for linear property. It was suggested that in the past the MGB has found that the AEUB record is not always the sole or ultimate consideration for the DLA when determining the characteristics of the pipe that are to be the basis of an assessment.

Finally, it was submitted that due to the date that the Complainant acquired the pipe, it was virtually impossible to have applied to the AEUB to give this pipe Discontinued status. The Complainant acquired the pipe in late October, and the critical date for assessing the characteristics of the pipe is October 31 of the year prior to the year the assessment notice is mailed. This left them without the opportunity to take advantage of the additional depreciation via registering the status of the pipe with the AEUB. It was argued that it is, therefore, unfair to assess the pipe at full value because the Complainant was not given the choice of whether or not to discontinue the pipe.

The Complainant maintained that the requirements of fairness and equity suggest that because this pipe is factually non-operational, it should attract additional depreciation. They suggest that the MGB has the authority to change the value of an assessment and request that there be a fair and reasonable reduction or remission in the assessment.

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

The DLA acknowledged the Complainant has requested that additional depreciation be made applicable to the pipe at issue. The DLA argued the legislation does not permit either the assessor or the MGB to apply additional depreciation. The request for additional depreciation is based on two mistaken assumptions by the Complainant. 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.

What is being requested is for the MGB to declare the Guidelines incorrect and unfair, and to then substitute MGB's own criteria for depreciation in order to arrive at the assessment. This amounts to an appeal of an assessment policy prescribed by law. It was suggested that the MGB is not vested with the authority to change the policies or guidelines of the Minister. Nor is the MGB or the assessor of linear property empowered to grant additional depreciation not prescribed by law.

There is a process to be followed when seeking to draw the applicable additional depreciation in the Manual. Mr. Michael Gerald Moffatt, a pipeline engineering specialist and member of the Association of Professional Engineers, Geologists and Geophysicists of Alberta, gave evidence that the assessment

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process for linear property is a system that has self-reporting features that the owners of linear property are expected to observe. As such, the onus is on the owner or licensee to register the pipe information with the AEUB if it wishes to take advantage of the actual status of the pipe for assessment and taxation purposes. Attention was drawn to AEUB Interim Directive ID 2000-09, which requires a licensee to submit a license amendment to inform the AEUB of the discontinuation of a licensed pipe in accordance with Guide 56. The Guide sets out filing requirements for those owners who wish to change the status of a pipe or register a new pipe 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.

The DLA also introduced the oral evidence of Mr. Dan Driscoll, manager with of 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 in the Province the pipe is located, it is valued the same. It was further argued by Mr. Driscoll that the records-based system was agreed upon by representatives from the DLA's office and all relevant stakeholders, including numerous owners and operators. 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.

Further, 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. The DLA submitted that 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. It was asserted that 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 assessor or the MGB to apply the additional depreciation factors. Only when the criteria specified therein are met is additional depreciation applicable.

The DLA stated that changes to the Minister's Guidelines in 2001 created a different environment in which the current complaint is to be considered compared to the situation that affected the decisions



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made in Board Orders MGB 168/01 and MGB 173/01. Therefore, the decisions made in the two previous Board Orders do not apply to this situation.

The DLA asserts that none of the criteria for additional depreciation are applicable for the properties under complaint, and requests that the complaints relating to these properties be denied, and that the assessments be confirmed.

### **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. Additional depreciation is applied to “Discontinued” pipe but not “Operational” pipe. Discontinued pipe is the status of the pipe as determined by the record at the AEUB. The subject pipe 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 Complainant admitted that no attempt had been made to change the record or that there was an error in the records of the AEUB.
3. The DLA is required to prepare assessments for linear property based on the characteristics of the property as they appear in the AEUB records.
4. The subject pipe is correctly categorized as linear property and must be assessed as such. The subject pipe does not fall in a category of non-assessable items pursuant to the Act.
5. As of October 31, the Complainant was the owner/operator of the linear property and thus the assessed person.
6. The fact scenario in Board Order MGB 168/01 is different from the subject case.

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 for PPI-ID 630232 is denied and the assessment is confirmed.

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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 Legal Subdivision (LSD) that has a Non Producing Well”. The subject pipe does not have a WE code nor is it within an LSD that has a non-producing well and, therefore, does not qualify for depreciation under this category.

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

The third test for additional depreciation is “pipe constructed prior to 1940”. There was no evidence to suggest the subject pipe 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 property as found in the AEUB records exhibits the specified characteristics that would require the DLA to apply additional depreciation.

The 2001 Manual reflects significant changes. These changes include: elimination of the definition of abandoned, the exclusion of an abandoned well from the definition of a non-producing well, the elimination of additional depreciation for abandoned pipe, the reference to only the records of AEUB in the definitions of operational and discontinued pipe and the reference to the fact that depreciation described in the 2001 Manual is exhaustive. The MGB was convinced that all the changes incorporated into the 2001 Manual result in a different conclusion than that reached in Board Order MGB 168/01.

#### **Standardized Assessment**

The Complainant did not dispute that the process for linear property assessment is a regulated or standardized process or 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.

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Section 292 of the Act requires the DLA to reflect the specifications and characteristics of the linear property as contained within the records of the AEUB. A careful analysis of the procedural requirements demonstrates that by basing the assessment on the status of the pipe in the records of the AEUB, the DLA prepared the assessments correctly and according to legislative direction. There was no other evidence submitted by the Complainant to suggest this was not the case.

### **Definitions and Correctness**

The numerous definitions covering linear property as set out in Section 284 (1)(k)(iii) of the Act identify pipes as linear property and subsection (B) specifies that “any pipe for the conveyance or disposal of water ...” qualifies as linear property. There is no qualification in this section that the pipe needs to be connected to an operational pump or pump station to fall under this definition. Although not currently operational, this pipe is for the conveyance or disposal of water and, therefore, this pipe is linear property. Section 281 (1) (k) clarifies that “whether the pipe is used or not” the pipe qualifies as linear property.

### **Additional Depreciation and Reporting Requirements**

As previously noted additional depreciation is applicable only 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 be followed. How the valuation standards in the Guidelines and Manuals 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) of the Act. Subsection (i) of Section 292 (2) (b) directs that the relevant specifications and characteristics are those that appear in the AEUB records. If the characteristics in the records of the AEUB match the criteria set out in Schedule D then, and only then, is additional depreciation applicable. This is a clear path carved out by the legislation that the DLA must follow in preparing each assessment of linear property and apply depreciation and additional depreciation for the subject property.

The MGB in other decisions has indicated that where the AEUB records lead to a mixed conclusion as to the status of the linear property, the DLA has responsibility to investigate further as to the applicable status, and then apply the resultant applicable depreciation. In this specific case there was no conflicting record at the AEUB put forward by the Complainant which would lead one to question what specific category of additional depreciation in Section 4.000 of the Manual would apply to the subject property.

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The MGB was convinced by the evidence of the DLA, that there is a 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 AEUB records to ensure that they reflect accurately 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 properly reflected 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, throughout 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 itself was unsure whether or not it would have use for this pipe in the future. The MGB finds that not only was this a failure on the Complainant's part to meet the onus to report the changed status of the pipe, the failure itself was deliberate and grounded in a cost-benefit analysis that resulted in a conscious choice not to report the changed status, based on potential future interests of the company.

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 if it is warranted by the characteristics and specifications of the property as captured by those records.

### **Ownership**

The Complainant contends that it has suffered unfairness through the regulated assessment procedure because the timing of the acquisition of the linear property under complaint made it virtually impossible to register the discontinued status of this pipe in time to take advantage of the additional depreciation.

Section 304 of the Act sets out specific direction on who is the assessed person. In the case of linear property the assessed person is the operator of the linear property. As of October 31 of the assessment year, the Complainant was the owner/operator of the linear property. The legislation does not authorize any type of adjustment for a change in ownership that occurs during the year.

### **Fairness and Equity**

The Complainant did not enter examples of properties similar to the subject that allegedly received additional depreciation. As a result, there was no indication that the DLA had applied the Regulation

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unfairly and inequitably. The evidence of the Respondent indicated that they had consistently applied the depreciation factors in accordance with the records filed at the AEUB.

The MGB heard no evidence that other similar linear property to the subject property was given any additional depreciation. This is the limited context in which the MGB can determine if equity has been achieved. It is not the role of the MGB to determine if the regulations and the Manual themselves lead to an equitable result, that is the role of the legislators not the MGB.

It is clear that the Complainant does have an equity remedy that can be implemented at its own initiative and that is to have the records at the AEUB changed.

### **Previous Board Decisions - Comparison to Board Orders MGB 168/01 and MGB 173/01**

The Complainant argued that past MGB decisions, namely Board Orders MGB 168/01 and MGB 173/01, support their request as the subject pipe in this complaint is similar to the subject pipe in those decisions and the Complainant should receive the same remedy of additional depreciation because the pipe was not being utilized. The MGB determines that this proposition is a misinterpretation of the decisions in Board Orders MGB 168/01 and 173/01.

The facts in the cases are not similar. This case involves “Discontinued” pipe while Board Orders MGB 168/01 and MGB 173/01 involved “pipe attached to non-producing and/or abandoned wells”. The subject pipe is not attached to a non-producing or abandoned well thus it does not meet 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 a non-producing well 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 it germane to this case. More importantly this case deals with discontinued pipe which has a specific meaning and, if recorded as such at the AEUB, receives additional depreciation. There is clearly a specific procedure for applying additional depreciation to discontinued pipe which in this case the DLA correctly and fairly followed. Thus, the fact scenarios in Board Orders MGB 168/01 and 173/01 are 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 assessment of this property meets the requirements of equity within a regulated system, because it is assessed in a similar way to other linear property having similar specifications and characteristics according to the AEUB records. Under the circumstances, the assessment is fair because the Complainant chose not to register the pipe as “Discontinued”. Even if the resulting tax obligations were found to be unfairly attributable to the Complainant, the legislation confers no authority on the DLA to

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take these factors into account in the assessment process. Furthermore, it is the duty of the MGB to determine only if the legislation was applied in a fair, equitable and correct fashion. 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.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 27th day of October 2003.

MUNICIPAL GOVERNMENT BOARD

(SGD.) R. Scotnicki, Presiding Officer

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**APPENDIX "A"**

APPEARANCES

| <b>NAME</b>            | <b>CAPACITY</b>  |
|------------------------|--|
| Diane Sheprak          | Representative of Penn West Petroleum, the Complainant |
| Carol Zukiwski         | Solicitor for DLA                                      |
| Dan Driscoll           | Manager, Assessment Services Branch                    |
| Michael Gerald Moffatt | Pipeline Engineering Specialist                        |

**APPENDIX "B"**

DOCUMENTS RECEIVED FROM THE PARTIES AND CONSIDERED BY THE MGB

| <b>NO.</b> | <b>ITEM</b>                                     |
|------------|---|
| Exhibit 1C | Additional Complaint information                |
| Exhibit 2C | Rebuttal of the Complainant                     |
| Exhibit 3R | Volume of Documents of the DLA                  |
| Exhibit 4R | Legal Argument of the DLA                       |
| Exhibit 5R | Resume of Michael Gerald Moffatt                |
| Exhibit 6R | AEUB Interim Directive                          |
| Exhibit 7R | Resume of Dan Driscoll                          |
| Exhibit 8R | MGB Preliminary Hearing Disclosure Instructions |



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Exhibit 9R

Objection of DLA to Disclosure of Complainant