

**BOARD ORDER: MGB 190/99**

**IN THE MATTER OF THE "Municipal Government Act"** being Chapter M-26.1 of the Statutes of Alberta 1994 (the Act).

**AND IN THE MATTER OF A** 1998 Linear Assessment complaint placed before the Municipal Government Board.

**BETWEEN:**

AltaGas - Complainant

- a n d -

The Crown in the Right of the Province of Alberta as represented by the Minister of  
Municipal Affairs - Respondent

**BEFORE:**

N. Dennis, Presiding Officer

J. Molaro, Member

J. Schmidt, Member

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta on April 30, 1999.

This is a hearing in respect of a complaint filed with the Municipal Government Board (Board) concerning 1997 linear property assessments entered in the 1998 assessment rolls of several municipalities as follows:

<b>Municipality</b>	<b>Type</b>	<b>Item</b>	<b>Assessment Land</b>
<b>(AltaGas Services)</b>			
<b>Municipal District of Bonnyville No. 87 (Annex ID18)</b>	<b>Well</b>	<b>29,450</b>	<b>1,460</b>
<b>Municipal District of Acadia No. 34</b>	<b>Well</b>	<b>278,590</b>	<b>10,220</b>
<b>Municipal District of Bonnyville No. 87</b>	<b>Well</b>	<b>164,290</b>	<b>13,140</b>
<b>Flagstaff County</b>	<b>Well</b>	<b>340,150</b>	<b>14,600</b>
<b>Special Areas Board</b>	<b>Well</b>	<b>310,090</b>	<b>10,220</b>
<b>County of Ponoka No. 3</b>	<b>Well</b>	<b>86,340</b>	<b>1,460</b>
<b>County of St. Paul No. 19</b>	<b>Well</b>	<b>110,730</b>	<b>7,300</b>

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<b>Municipality</b>	<b>Type</b>	<b>Item</b>	<b>Assessment Land</b>
<b>(AltaGas Marketing)</b>			
<b>Municipal District of Acadia No. 34</b>	<b>Well</b>	<b>106,810</b>	<b>5,840</b>
<b>Special Areas Board</b>		<b>163,420</b>	<b>7,300</b>

**PRELIMINARY MATTERS/BACKGROUND**

- Pursuant to section 292 of the Act, an assessment notice dated May 22, 1998, was sent to AltaGas Services and Alberta Gas Marketing by the Assessment Services Branch of Municipal Affairs.
- On June 22, 1998, AltaGas appealed a portion of its 1998 Pipeline Assessment Notice. Their basis for complaint was that they are not the owner of the linear properties in question, but simply the contractor for other parties who are well owners.
- The Board scheduled a hearing for October 5, 1998, at the Board's office in Edmonton. Both parties were properly notified as to the scheduled hearing.
- The Board heard the linear property complaints on October 5, 1998. Only the Respondent was present at the October 5, 1998 hearing. On the same day as the hearing, the Complainant faxed a request to re-schedule the hearing; claiming that due to their own oversight they failed to attend. At the hearing, certain roll numbers and assessment information required clarification which was to be supplied at a later date.
- On February 19, 1999, the Board heard argument from both parties with regard to the re-hearing request. In Board Order MGB 84/99, the Board ruled for reasons outlined therein, that the October 5, 1998, hearing had not been closed and would be continued at a date convenient to the parties before the Board.
- The continuation of the hearing was scheduled for April 30, 1999.
- On April 21, 1999, Mr. Alan Fenton, one of the presiding Board members from the previous two hearings submitted a letter to the Chairman of the Board requesting that he be removed from the panel to avoid any possible perception of conflict of interest or bias. Mr. Fenton indicated that in his capacity as assessor for a number of Indian Bands, he has the need for contact with personnel from the linear assessment section and this contact may be perceived as conflict of interest or bias. Mr. Fenton suggested that because the issues to be argued are new, Mr. Jack Schmidt would be a suitable replacement.

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- Prior to the start of the merit hearing on April 30, 1999, both parties were advised of Mr. Fenton's letter and were polled as to Mr. Schmidt being the replacement member of the Board panel to deal with this specific issue. Both parties accepted Mr. Schmidt as the third member of the panel.

### ISSUES

Who is the assessed person of wells and well sites?

### LEGISLATION

Municipal Government Act, Statutes of Alberta, 1994, Chapter M-26-1 with amendments in force as of December 31, 1998.

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 oil or gas, or both, or any other mineral,*
  - (II) *injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,*
  - (III) *supplying water for injection to an underground formation, or*
  - (IV) *monitoring or observing performance of a pool, aquifer or an oil sands deposit,*
- (D) *well head installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph ( C ) or for the protection of the well head installations,*
- (E) *the legal interest in the land that forms the site of wells used for any of the purposes described in paragraph (C) if it is by way of a lease, licence or permit from the Crown, and*

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

*but not including*

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

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

*(II) a regulating or metering station,*

*or*

*(G) land or buildings;*

*(p) "operator", in respect of linear property, means*

*(i) the owner of the linear property*

*(ii) a person who has applied in writing to and been approved by the Minister as an operator of linear property,*

*(iii) for linear property described in clause (k)(iii)(A) or (B), the permittee or licensee as those terms are defined in the Pipeline Act, or*

*(iv) for linear property described in clause (k)(iii)(C) or (D), the operator of a battery as that phrase is defined in the regulations under the Oil and Gas Conservation Act;*

*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;*

*Alberta Regulation 151/71 Oil and Gas Conservation (Consolidated up to 179/98)*

*Oil and Gas Conservation Act*

*1.020(1) The terms defined in section 1 of the Oil and Gas Conservation Act have the same meaning in these Regulations.*

*(2) In these Regulations,*

*13. "operator of a battery" includes*

*(i) a person who has control of the operation of the wells or equipment at a battery, or*

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- (ii) *a person permitted to keep records or file reports on a battery or group basis under section 84 of the Act, or*
- (iii) *the holder of an approval issued under section 7.001, or*

### SUMMARY OF COMPLAINANT'S POSITION

The Complainant, in his opening statement, indicated that although AltaGas operates the individual wells they are not the well owner and believe it is inappropriate that AltaGas not only be assessed but be subject to tax for linear property within the various municipalities owned by others.

AltaGas takes the position that it should only be responsible for payment of municipal taxes, or for that matter any taxes, related to facilities it owns or has an interest in or is contractually obligated to as a consequence of "Construction, Ownership and Operating" agreements or other similar agreements. The Industrial Assessment Well and Flowline Assessments that are the subject of this appeal do not identify AltaGas as being the well owner. AltaGas does not have any agreements with any of these companies to pay taxes related to their wells or well sites or any of their interest in such wells and well sites. AltaGas, in its role as well operator, did not agree to nor does it believe that the well and well site owner ever intended that AltaGas take on the obligations of the well owner, for example geological interpretation, reservoir engineering or any other obligations directly related to the wells and well sites such as taxes or royalties of any kind. It is the well owner, or if applicable, the joint interest holder designated on behalf of other companies having an interest in the wells and well sites who is responsible for the payment of such obligations.

It is the Complainant's view that the generally accepted definition of the "well operator" is the owner or one of the owners of the well that has been designated to operate the well by the other owners. In the circumstances before the Board, the "well operator" has contractually assigned some of their responsibilities to AltaGas, specifically daily operation of the well. However, the major responsibilities such as optimizing production, downhole work, and payment of the direct costs related to the well, including taxes, are retained by the "well operator".

The fee that AltaGas charges the well owner for daily operating and filing Alberta Energy and Utilities Board (AEUB) reports does not include any amount for the time value of money for having a large receivable outstanding for any period of time or acting as the well owners' agent for reconciliation of issues related to the amount of taxes owing.

The Complainant presented a copy of the complete Property Assessment and Tax Notice which was received from the Municipal District of Bonnyville No. 87 for the linear property that AltaGas owns, or is alleged to own in the Municipal District. The Municipal Affairs linear assessments, which form the basis for this Tax Notice, and, as the Complainant believes the Board will appreciate they must be reconciled back to this Tax Notice. The reconciliation is not easy and

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it would be further complicated by having to identify and invoice the well and well site taxes. In addition, particularly in the absence of an agreement with the well owners, the possibility always exists there will be disputes regarding the amount the Complainant paid on the well owners behalf and their diligence in reviewing the assessment.

The Act, in section 284(1)(p) defines an “operator” in respect of linear property:

- (i) the owner of the linear property,  
AltaGas is not the owner of the linear property in question.
- (ii) a person who has applied in writing to and been approved by the Minister as an operator of linear property,  
AltaGas has applied to the Minister and has been approved as an operator of linear property, but only of flowlines and pipelines owned by AltaGas, not the wells or well sites which are the subject of this appeal.
- (iii) for linear property described in clause (k)(iii)(A) or (B), the permittee or licensee as those terms are defined in the Pipeline Act,  
The linear property described in those sections is not the type of linear property that is the subject of this appeal.
- (iv) for linear property described in (k)(iii)(C) or (D), the operator of a battery as that phrase is defined in the regulations under the Oil and Gas Conservation Act:  
It is the Complainant’s interpretation that a battery is related to oil production, and accordingly their view is that an operator of a battery is a party with an ownership interest in oil production. AltaGas operates gas facilities, not batteries and has no ownership interest in production.

Although the AEUB records (S-1 and S-2 reports) indicate AltaGas is the operator of the well properties this is done to provide a consistency of operation between the field and plant facilities. AltaGas is filing these production and royalty reports on behalf of the well owners.

### SUMMARY OF RESPONDENT'S POSITION

The Respondent, in their opening statement, indicated that in determining the assessed party they are governed by the Act and regulation thereto and the company of record listed in the AEUB records.

Section 304(1)(i) of the Act provides that the assessed person for linear property is the “operator of the linear property”. Section 284(p)(iv) states that the operator in respect of linear property means:

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(iv) for linear property described in section (k)(iii)(C) or (D), the operator of the battery as that phrase is defined in the regulations under the Oil and Gas Conservation Act.

Section 284(k)(iii)(C) constitutes, generally speaking, any pipe in a well intended for certain purposes. Section 284(k)(iii)(D) constitutes well head installations and section 284(k)(iii)(E.1) allows for land to be included with section 284(k)(iii)(C).

Section 13 of Regulation 151/71 under the Oil and Gas Conservation Act states that the “operator of a battery” includes the following:

- (i) a person who has the control of the operation of the wells or equipment at a battery;
- (ii) a person permitted to keep records or file reports or file reports on a battery or group basis under section 84 of the Act;
- (iii) the holder of an approval issued under section 7.001, or
- (iv) a person who receives from a well or battery a part of the production that requires separate handling, such as tank bottoms, so that it may be disposed of.

AEUB records indicate that AltaGas is the Battery Operator and the wells under complaint are included in these reports. It is on this basis of the AEUB records that the battery operator is determined for the purpose of assessment.

The Respondent also noted that a special transfer document provided by Municipal Affairs had not been executed with regard to subject properties. This document allows the transfer of assessment on wells from one company to another provided it is executed by the well owner and properly filed with the linear assessment department.

### **FINDINGS OF FACT**

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 hereto, the Board finds the facts in the matter to be as follows:

1. AltaGas is the well and battery operator for the well properties under complaint.
2. AltaGas is the operator as defined by the Act for assessment and taxation.

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

### **DECISION**

AltaGas is the operator of the wells under complaint and the complaint is hereby denied.

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It is so ordered.

### REASONS

AltaGas, by its own admission, is the company that has control over the operation of wells that they produce on behalf of the various well owners. AltaGas indicated to the Board that they prefer to operate these outside party wells “as the gas wells are connected to our gathering and processing facilities, operating the wells simplifies our understanding of the flows to our facilities, eases start up and shut down situations and provides AltaGas with additional justification for staffing resources to respond to emergencies”. However, AltaGas contends that they, being a contract operator, does not mean that they are the operator, as defined by the Act for assessment and taxation purposes. The Board disagrees with AltaGas that they are not the operator as defined by the Act.

The Board reached its conclusion by very carefully examining the applicable sections of the Act as well as the Oil and Gas Conservation Act and Regulation 151/71.

Section 284(1)(p) of the Act

In this clause the Act defined “operator”, in respect of linear property, means

- (i) the owner of the linear property
- (ii) a person who has applied in writing to and been approved by the Minister as an operator of linear property,
- (iii) for linear property described in clause (k)(iii)(A) or (B), the permittee or licensee as those terms are defined in the Pipeline Act, or
- (iv) for linear property described in clause (k)(iii)(C) or (D), the operator of a batter as that phrase is defined in the regulations under the Oil and Gas Conservation Act;

The applicable clause is (iv) for linear property described in (k)(iii)(C) or (D) that being well head installations. The Board then needed to determine if AltaGas was captured as an operator under clause (iv) as that phase is defined in the regulations under the Oil and Gas Conservation Act.

Turning to the Oil and Gas Conservation Act and Alberta Regulation 151/71 clause 13 states “operator of a battery” includes:

- (i) a person who has control of the operation of the wells or equipment at a battery, or
- (ii) a person permitted to keep records or file reports on a battery or group basis under section 84 of the Act.

Clearly AltaGas, by their own admission, meets the test for both (i) and (ii).



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Satisfied that AltaGas is the operator, the Board then returned to the Act and found them assessable under the following clause:

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

The Board views this clause as the vehicle by which the operator can be assessed once the operator has been defined under 284(1)(p).

The Board also reviewed the argument extended by AltaGas that a battery is related to oil production and accordingly that an “operator of a battery” relates only to oil facilities. AltaGas in this case is the operator of gas facilities.

The Board looked to the following clauses taken from both the Oil and Gas Conservation Act and Alberta Regulations 151/71 pertaining thereto.

**Definitions**

1(1) In this Act,

- (b) “battery” means a system or arrangement of tanks or other surface equipment receiving the effluents of one or more wells prior to delivery to market or other disposition, and may include equipment or devices for separating the effluents into oil, gas or water and for measurement;

**Section 84 of the Oil and Gas Conservation Act - Battery of wells**

84 The Board, on application, may permit the keeping of records or the filing of reports for a battery or group of wells at which the product of wells is commingled before measurement, but in that case

- (a) the figures shall be attributed to individual wells in the battery or group in a manner satisfactory to the Board to indicate as nearly as possible the actual production of the individual wells, and
- (b) the attributed figures shall represent the production of each well for all purposes.

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Regulation 151/71

7.001 No person shall commence construction of or modification to a battery, other than a battery receiving production from a single well which produces gas containing less than 0.01 moles per kilomole of hydrogen sulphide, waste management facility or compressor station, unless the Board has, on application, approved the location and construction of or modification to the battery, waste management facility or compressor station.

Although not specifically clear in the Oil and Gas Act or Regulations, the Board is satisfied that certain words and phrases used in these documents lends interference to the conclusion that the term “battery operator” can refer to a person that controls and operates either oil or gas wells including facilities, or a combination of both. The Board interprets “battery operator” as being a generic term used by the AEUB to designate the operator of a group of wells producing into a central facility.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 18th day of August, 1999.

MUNICIPAL GOVERNMENT BOARD

N.A. Dennis, Presiding Officer

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**APPENDIX "A"**

APPEARANCES

<b>NAME</b>	<b>CAPACITY</b>
J. McDonald	For the Complainant
J. Husar	For the Respondent
G. Johnson	For the Respondent
K. Holstad	For the Respondent

**APPENDIX "B"**

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD:

<b>NO.</b>	<b>ITEM</b>
Exhibit 1	AltaGas Letter - June 22, 1998 - Appeal submission.
Exhibit 2	AltaGas Letter to Board - October 28, 1998 - Submission to support request to "Re-open" hearing.
Exhibit 3	AMA Solicitor Letter to Board - November 13, 1998 - Attaching submission of Respondent.
Exhibit 4	Alberta Municipal Affairs - Declaration of Special Operator for wells