

BOARD ORDER: MGB 31/97

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

AND IN THE MATTER OF AN APPEAL from a 1995 Linear Assessment prepared by the Assessor Designated by the Minister.

BETWEEN:

The City of Edmonton - Appellant

- a n d -

The Minister of Municipal Affairs - Respondent

BEFORE:

Earl J. Briscoe, Presiding Officer
Norman A. Dennis, Member
Frank Martin, Member
Charles Bethune, Secretariat

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta on December 2, 3 and 5 1996.

This is an appeal to the Municipal Government Board in respect to a Linear Assessment entered in the 1996 assessment roll of the City of Edmonton as follows:

1995 Linear Assessment	54,647,520
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BACKGROUND:

In September of 1992 and effective December 31, 1992 the Edmonton Power Authority was established under City of Edmonton Bylaw Number 10234. Upon establishment of the Edmonton Power Authority, management and operation of the electric power system in the City of Edmonton was transferred to Edmonton Power. Street lighting systems in the City remained under the City of Edmonton's management and operation through the City's Transportation Department.

As a result of the establishment of the Edmonton Power Authority, Edmonton Power's electric power system was assessed in 1993 and 1994 under the Electric Power and Pipeline Act. The street lighting system of the City of Edmonton was carried on the 1993 and 1994 assessment rolls as exempt from assessment and taxation. Prior to 1993, The City of Edmonton's electric power system, which included street lighting, was assessed and taxed under the Municipal and Provincial Valuation Act.

On January 1, 1995, The Province repealed The Municipal Taxation Act and enacted a new Municipal Government Act being the "The Municipal Government Act, S.A. 1994, cM-26.1.

On March 21, 1995, a Property Tax Meeting was held between the Provincial Assessors, the City of Edmonton Assessors and representatives of Edmonton Power Authority. The minutes of the meeting indicate that the street lighting system was maintained by Edmonton Power and billed to the City of Edmonton Transportation Department.

On March 31, 1995, the City of Edmonton completed its 1995 assessment roll for assessed property in accordance with an extension granted by Ministerial Order. Street lighting was carried on the 1995 assessment roll as exempt from taxation.

City of Edmonton Bylaw Number 10234 was repealed by Bylaw Number 11071 passed on June 28, 1995 to establish Edmonton Power Corporation and was incorporated as Edmonton Power Corporation on August 28, 1995.

On December 31, 1995, the Master Agreement between the City of Edmonton and Edmonton Power Corporation confirmed that the street lighting system in Edmonton continued to be owned by the City of Edmonton.

On March 18, 1996, the assessor for the Industrial Assessment Branch for the Province, transmitted by facsimile to the City of Edmonton, a draft notice outlining the assessment estimate for linear property for the assessment year 1995. The draft notice of assessment indicated two ownership's; one to Edmonton Power for Electrical Generation and Distribution System for \$364,769,650, the other to the City of Edmonton Transportation Department for Street Lighting for \$54,647,520.

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On March 31, 1996, the City of Edmonton completed the 1996 assessment roll in accordance with Ministerial Order 36/96. (1995 assessment year incorrectly stated as 1996 on Ministerial Order 36/96).

On April 23, 1996, the City of Edmonton gave first and second reading to its tax rate bylaw. On May 7, 1996, third and final reading was given to the City's tax rate bylaw for 1996. Thereafter on May 31, 1996, the City of Edmonton sent out its 1996 tax notices, based on the adoption of the 1995 assessment.

On May 24, 1996, Bill 34 amended the Municipal Government Act and all amendments passed on this date were retroactive and deemed to have come into force on January 1, 1995. Street lighting systems were shown as a separate entity in the definition of linear property in section 284(k)(i.1). Street lighting systems were excluded from the assessment exemptions in section 298(i.1). No amendment was made under tax exemptions in section 362(b).

The City of Edmonton did not receive an assessment notice for linear property, in particular its street lighting system in accordance with the Municipal Government Act on or before May 31, 1996.

A document dated August 19, 1996 was provided to the City of Edmonton by the assessor for the Province entitled "Assessment Notice" in relation to linear property, assessing the City's street lighting at 54,647,520.

On September 9, 1996, the City of Edmonton appealed the 1995 Linear Assessment.

SUMMARY OF APPELLANT'S POSITION

The 1995 Linear Assessment is appealed for the following reasons:

(1) The assessment notice issued by the provincial assessor is invalid because it was not issued within the time requirements imposed by the Municipal Government Act and because it does not comply with the general requirements for an assessment notice under the Municipal Government Act.

Assessment notices must be sent, no later than the date the tax notices are required to be sent under part 10 of the Municipal Government Act. This means that the assessment notices for the 1995 assessment of linear property must be sent to the City of Edmonton by May 31, 1996. The provincial assessor failed to send the 1995 assessment notice for street lighting systems prior to the legislated date. The document sent by the provincial assessor on August 19, 1996 is not a valid assessment notice and not an amended notice according to the Act.

An assessment roll must be prepared annually, not later than February 28. Therefore the provincial assessor in regards to linear property must advise if the property is exempt from taxation under part 10 of the Municipal Government Act and require that a notation of that fact be recorded upon the roll. The assessor failed to provide such information to the City prior to February 28, 1996.

(2) The City of Edmonton's street lighting system is exempt from taxation under section 362(b) of the Municipal Government Act.

The City street lighting system is owned by the City of Edmonton. The City has disposed of its electrical power system as a result of a purchase by Edmonton Power Corporation but retained the street lighting system which is managed and operated by the City's Transportation Department.

Pursuant to section 362(b) of the Municipal Government Act, property held by a municipality is exempt from taxation unless it is established that exemptions from this applies. The City of Edmonton submits that the street lighting system does not generate income for the City. The street lighting system costs the City money in the form of expenses for maintenance and installation. Further, the City pays money to Edmonton Power Corporation for their continual maintenance. The City's street lighting is also operated as a public benefit, it enhances the safety of the traveling public along roadways and sidewalks. Section 362(b) of the Municipal Government applies to exempt the city's street lighting system from taxation under the Act.

The City respectfully submits that the assessment notice should be corrected to note that the linear property valued, that is the City's street lighting system, is exempt from taxation under part 10 of the Act.

SUMMARY OF RESPONDENT'S POSITION

There has been considerable evidence put forth to indicate that the Province has not fulfilled their statutory obligation to provide information by prescribed dates, however the City of Edmonton did not meet their obligation to provide information on their electric power system including street lighting. The City of Edmonton has stated that the street lighting system was exempt on their roll since 1993, however this should not have been the case. The omission of the street lighting system from the roll was discovered when the provincial department prepared the linear assessment on behalf of the City of Edmonton for the 1995 roll.

The provincial assessor is not required through legislation to instruct the Municipality as to where to enter the linear assessment on their roll. After the assessor designated by the Minister completes the calculations of a linear property assessment, the procedure for entering the assessment on the roll is specified in section 308 of the Municipal Government Act. Nowhere in section 308, or anywhere else, does the Act allow or suggest that the assessor designated by the Minister can instruct a municipality where on the roll to enter the assessment.

It has been argued that street lighting systems is exempt as municipally held property that does not fit any of the exclusions from the exemption under section 362(b) of the Act. The issue of whether street lighting systems fell to the definition of roads, exempt from assessment as a public safety feature, or as argued a public benefit, has been removed by the amendments to the Act, 284(k)(i.1). Clearly the intent of the amendments were to assess and tax street lighting systems, regardless of ownership. The department believes that the legislators clearly understood that street lighting systems were not viewed as a public benefit, but rather a corporate undertaking, part of an electric power system. The logic that was followed indicates that the municipality chose to provide the same service as a private electric company, therefore the provisions of 362(b)(ii) do not apply. If the street lighting system is not a public benefit, an exemption under section 362(b)(i) would have to show that the property earns no revenue, not expenses exceeding revenue. Under the management of Edmonton Power, the entire electric system including street lighting earned revenue. The argument that the street lighting component did not earn revenue should not be considered, as many companies have lost leaders. The March 21, 1995 meeting with representatives from Edmonton Power, the City and the Department outlines that street lighting is part of their system. Clearly at that time, the parties believed street lights were part of the electric power system.

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:

In September of 1992 and effective December 31, 1992 the Edmonton Power Authority was established under City of Edmonton By-Law Number 10234.

The Edmonton Power's electric power system was assessed in 1993 and 1994 under the Electric Power and Pipeline Assessment Act.

The street lighting system of the City of Edmonton was carried on the 1993 and 1994 assessment rolls as exempt from assessment and taxation.

Prior to 1993, The City of Edmonton's electric power system, which included street lighting, was assessed and taxed under the Municipal and Provincial Valuation Act.

On January 1, 1995, The Province repealed The Municipal Taxation Act and reenacted a new Municipal Government Act being the "The Municipal Government Act, S.A. 1994, cM-26.1.

On March 31, 1995, the City of Edmonton completed its 1995 assessment roll for assessed property in accordance with an extension granted by Ministerial Order.

The City of Edmonton's Street lighting System was carried on the 1995 assessment roll as exempt from taxation.

City of Edmonton Bylaw Number 10234 was repealed by Bylaw Number 11071 passed on June 28, 1995 to establish Edmonton Power Corporation.

Edmonton Power Corporation was incorporated on August 28, 1995.

On December 31, 1995, the Master Agreement between the City of Edmonton and Edmonton Power Corporation confirmed that the street lighting system in Edmonton continued to be owned by the City of Edmonton.

On March 18, 1996, the assessor for the Industrial Assessment Branch for the Province, transmitted by facsimile to the City of Edmonton, a draft notice outlining the assessment estimate for linear property for the assessment year 1995.

The March 18, 1996 draft notice of assessment indicated two ownership's; one to Edmonton Power for Electrical Generation and Distribution System for \$364,769,650, the other to the City of Edmonton Transportation Department for Street Lighting for \$54,647,520.

On March 31, 1996, the City of Edmonton completed the 1996 assessment roll in accordance with Ministerial Order 36/96. (1995 assessment year incorrectly stated as 1996 on Ministerial Order 36/96).

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On May 24, 1996, Bill 34 amended the Municipal Government Act and all amendments passed on this date were retroactive and deemed to have come into force on January 1, 1995.

Bill 34 shows street lighting systems as a separate entity in the definition of linear property in section 284(k)(i.1).

In Bill 34 street lighting systems were excluded from the assessment exemptions in section 298(i.1).

In Bill 34 no amendment was made under tax exemptions in section 362(b).

On May 31, 1996, the City of Edmonton sent out its 1996 tax notices, based on the adoption of the 1995 assessment.

The City of Edmonton did not receive an assessment notice for linear property, in particular its street lighting system in accordance with The Municipal Government Act before May 31, 1996.

A document dated August 19, 1996 was provided to the City of Edmonton by the assessor for the Province entitled "Assessment Notice" in relation to linear property, assessing the City's street lighting at 54,647,520.

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

The 1995 Linear property is assessable for the assessment year 1995, but is exempt from taxation on the 1996 assessment roll.

REASONS

The issue on this appeal is whether the City of Edmonton's street lighting system ought to have been included in its 1995 linear property assessment.

The assessment was carried out under the provisions of the new Municipal Government Act (the "MGA"), which came into effect January 1, 1995.

There is no dispute that street lighting falls within the meaning of "linear property" under the MGA. The reason for this is that s. 284(1)(k)(i.1) of the MGA expressly states as follows:

- "284(1)(k) 'linear property' means
- (i.1) street lighting systems, including structures, installations, fittings and equipment used to supply light, but not including land or buildings,"

The question for the Board to decide is whether the City's street lighting system ought to have been excluded from its 1995 linear property assessment on the ground they are exempt from taxation under s. 362(b) of the MGA.

Section 362(b) of the MGA provides as follows:

- "362 The following are exempt from taxation under this Division:
- (b) property held by a municipality, except the following:
 - (i) property from which the municipality earns revenue and which is not operated for the public benefit;
 - (ii) property which is operated as a public benefit but which has annual revenue that exceeds the annual operating costs;
 - (iii) an electric power system;
 - (iv) a telecommunication system;
 - (v) a natural gas or propane system located in a hamlet, village, summer village, town or city or in a school district that is authorized under the *School Act* to impose taxes and has a population in excess of 500 people."

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Based on the evidence before it, the Board is satisfied that the City of Edmonton's street lighting system constitutes property held by a municipality. Thus, the street lights must be classified as exempt from taxation, unless one of the exceptions set out in s. 362(b) applies to them.

The exceptions described in subsections (iv) and (v) of s. 362(b) are clearly inapplicable to a street lighting system, so the Board need not consider them. This leaves the exceptions set out in subsections (i), (ii), and (iii).

Subsection (iii) creates an exception in relation to an "electric power system", which is defined as follows by s. 284(1)(g) of the MGA:

"284(g) 'electric power system' means a system intended for or used in the generation, transmission, distribution or sale of electricity."

In the Board's view this definition is not broad enough to include a street lighting system. Therefore, the exception created by subsection (iii) of s. 362(b) is also inapplicable to this case.

This leaves the exceptions created by subsections (i) and (ii) of s. 362(b), which only apply to property that is capable of earning revenue. The Board is satisfied that the City's street lighting system, standing alone, does not generate any revenue. Therefore, the Board has no alternative but to conclude that the City's street lighting system is exempt from taxation. From this it follows that the street lighting system is assessable in the City's 1995 linear assessment but is exempt from taxation on the 1996 assessment roll.

The Province argues that the street lighting system should be viewed as part of a larger system that does generate revenue, namely the electric power system transferred by the City to Edmonton Power Authority in 1992. However, there is no provision in the MGA or the regulations which authorizes the Board to do this.

The legislation is structured so that street lighting systems are assessable but exempt from taxation under part 10 of the MGA. Therefore given the wording of the Act, the Board is obligated to apply the legislation as stated.

It is so ordered. No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 19th day of March 1997.

MUNICIPAL GOVERNMENT BOARD

Norman A. Dennis, Member

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Stan Dilworth	Regional Director of Assessment on behalf of Appellant
Ernie Leugner	Director of Corporate Accounting & Reporting on behalf of Appellant
Michele Annich	Solicitor from Sharek Reay/Barristers & Solicitors on behalf of Appellant
Doug McLennan	Director of Assessment Audit & Equalization on behalf of Respondent
Dan Driscoll	Team Leader-Linear Assessments on behalf of Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
Exhibit 1	Submission of Appellant.
Exhibit 2	<u>Index to Exhibits.</u>
(A)	Extension of time for completion of Assessment Roll, letter dated February 10, 1995.
(B)	1995 Property Tax Information-May 1995.
(C)	Return of 1995 Assessment Information-City of Edmonton, dated July 4, 1995.
(D)	1994 Linear Property Assessment for 1995 Taxation, dated September 19, 1995.
(E)	Revised Assessment and Valuation for Tax Year 1995, Dated October 19, 1995 (E-1) (E-2)
(F)	Ministerial Order L435/95, dated December 5, 1995.
(G)	1996 Equalized Assessment Information package, dated December 13, 1995.
(H)	Calculation of 1996 Alberta School Foundation Fund Requisition for the City of Edmonton, dated February 26, 1996.
(I)	Extension of time for completion of Assessment Roll, letter February 16, 1996.
(J)	1996 Assessment Roll entry re: Street Lighting, March 31, 1996.
(K)	Revised Calculation of 1996 Alberta School Foundation Fund Requisition for the City of Edmonton, dated April 9, 1996.
(L)	City of Edmonton Bylaw No. 11264, 1996 Millrate Bylaw, dated May 7, 1996.
(M)	Revised Calculation of 1996 Alberta School Foundation Fund Requisition for the City of Edmonton, dated May 16, 1996.
(N)	Bill 34, Section 298.

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- (O) 1996 Property Tax Information-May 1996.
- (P) Revised 1996 Equalized Assessment Notice, dated August 2, 1996.
- (Q) 1996 Alberta School Foundation Fund Millrates-Statement of Account.
- (R) Alleged 1995 Linear Property Assessment Notice, dated August 19, 1996.
- (S) Letter to Municipal Affairs re: Education requisition, dated September 4,1996.
- (T) City of Edmonton Appeal of 1996 Equalized Assessment, dated September 9, 1996
- (U) City of Edmonton Appeal of 1995 Linear Property Assessment for Taxation in 1996, dated September 9, 1996.
- (V) 1996 Alberta School Foundation Fund Statement of Account, dated October 7, 1996.
- (W) Municipal Government Act, Section 317.
- (X) Electric Power and Pipeline Assessment Act, Section 1(g).
- (Y) Provincial response to Letter of September 4, 1996, dated October 28, 1996.
- (Z) Alberta Regulation 57/65.
- Exhibit 3 City of Edmonton Bylaw No. 11071, dated June 27,1995.
- Exhibit 4 City of Edmonton Bylaw No. 10234, dated September 15, 1992.

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Exhibit 5	Memorandum dated December 22, 1995 from Brian Hall to Jerry Higgins regarding Street Lighting with the following enclosures: (a) Part of the Master Agreement between the City of Edmonton and Edmonton Power Corporation. (b) Letter dated May 6, 1996 re: 1995 Linear Property Assessment for 1996 Taxation. (c) Letter dated May 7, 1996 re: Amended Notice for 1995 Linear Property Assessment for 1996 Taxation. (d) Page 3 of 1993 Edmonton Power Annual Report.
Exhibit 6	Submission of Respondent.
Exhibit 7	Submission of Respondent.
Exhibit 8	Alberta Regulation 363/88
Exhibit 9	Facsimile from Daniel Driscoll to Jerry Higgins, dated March 18, 1996 of Assessment Estimates for Linear Property for Assessment Year 1995.
Exhibit 10	Summation of Respondent
Exhibit 11	Summation of Respondent
Exhibit 12	Summation of Appellant.