

# Linear Property Assessment Complaints

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Volume I, Issue I

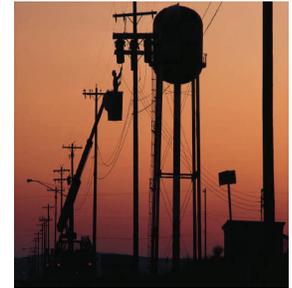
Date: May 2008

## Significant MGB Orders (Linear Property)

The MGB has prepared a list of Significant MGB Orders containing summaries of important decisions made by the MGB about issues related to Linear Property Assessment complaints. Where applicable, the judicial treatment of an MGB decision is included within the decision summary. The decisions have been concisely summarized, and have been grouped by the following subject areas:



- I Definitions of Linear Property
- II Pipeline Completeness/Capability
- III Equity
- IV Assessments' Reflection of ERCB Records
- V Extra Depreciation Under Schedule D
- VI More Schedule D depreciation, W policy/Equity
- VII Changing Errors in the Assessment Roll (and Equity)
- VIII Pipe Size (and Equity)
- IX Exemptions in section 298/362/376(1) - MGA
- X Procedural/Jurisdictional Matters - MGA



This document provides Linear Property stakeholders with a quick and ready access to the MGB's historical treatment of those subject areas that have been prevalent in Linear Property Complaints over the years. It is the MGB's hope that this will enhance stakeholders' understanding and accessibility to previous MGB Decisions.

To view the summarized decisions by subject, just click on the appropriate link above. The full-text of each summarized decision can be accessed from the Order List by clicking the link for the Board Order or Decision Letter Number. Please note: No link is provided for Board Orders or Decision Letters that have been quashed as a result of a judicial review; in effect, these decisions no longer exist.

## I Definition of Linear Property

Section 284(1)(k) of the Municipal Government Act (MGA) defines linear property to include electric power systems, street lighting, telecommunications systems, and pipelines. The description of each of these categories is complex, and has led in the past to uncertainty as to exactly what property falls under the linear assessment regime. The following decisions of the Municipal Government Board (MGB) concern disputes over whether certain properties were properly classified by the Designated Linear Assessor (DLA) as linear property.

**Did you know...**  
**In s. 284(1)(k)**  
**“Linear Property” is**  
**the most**  
**comprehensively**  
**defined term in the**  
**Municipal**  
**Government Act**  
**(MGA)**

### **Talisman - MGB 011/02 and MGB 080/04**

- Sheds or boxes covering well heads and metering equipment are part of a pipeline and not separately assessable as buildings (MGA Section 284(1)(k)(iii)(C) and (G))

### **Signalta Resources Ltd. MGB 127/97**

- Gas processing equipment, including separators and drip pots are properly classified as Machinery and Equipment (M&E) rather than linear property (MGA Section 284 (1)(k)(iii)(A) - (F))

### **Amoco MGB 192/99**

- Separating equipment and buildings on satellite pads are not linear property, but buildings and M&E. (MGA Section 284 (1)(k)(iii)(A) - (F))

### **Norcen Energy MGB 268/98**

- Skid mounted separators are not linear property, but M&E. (MGA Section 284 (1)(k)(iii)(A) - (F))

### **Pinnacle Resources MGB 235/98**

- Gas scrubbers, meter runs and orifice fittings are not linear property, but M&E. (MGA Section 284 (1)(k)(iii)(A) - (F))

### **Poco Petroleum Ltd. MGB 230/98**

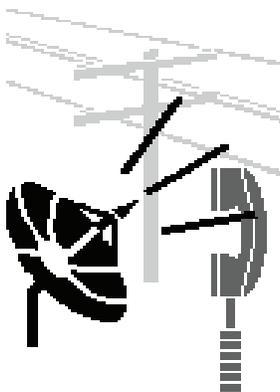
- Various components of satellite test battery and water injection system are not Linear property, but M&E. (MGA Section 284 (1)(k)(iii)(A) - (F))

### **Telus MGB 099/99, MGB 124/04 and MGB 035/05**

- Switches and the basic software that controls them are linear property, but feature software is not (MGA Section 284(1)(k)(ii))
- MGB 099/99 quashed by Court of Queen’s Bench but then restored by the Court of Appeal: Alberta (Minister of Municipal Affairs) v. Telus Communications Inc. 2002 ABCA 199

### **GT Group Telecom MGB 059/03**

- Equipment used for internet and network services (Data Assets) are linear property. This decision hinged on whether such assets are regulated by the CRTC (MGA Section 284(1)(k)(ii)(B))



## II Pipeline Completeness/Capability

For the most part, assessments must be prepared for incomplete as well as complete improvements. However, MGA section 291(2)(a) forbids assessment of linear property that is “under construction but not complete, unless it is capable of being used for the transmission of oil, gas, or electricity.” The following decisions arose from disputes over what steps must be taken before a pipeline is complete or capable of being used to transmit product. All three decisions have been tested by the courts.

### Rules for Assessing Improvements

**MGA s. 291(2) No assessment is to be prepared**

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



#### Alliance Pipeline MGB 106/02

- A pipeline must be capable of being used if it has been put to actual use to transmit significant quantities of product from beginning to end for sale at the receiving end. In this case the pipeline was capable of being used.
- Application for judicial review dismissed at Court of Queen’s Bench. The Court of Appeal quashed the decision, finding that actual transmission of product does not mean a pipeline is capable of being used. Where there are significant commissioning and safety issues outstanding, a pipeline is not yet capable of being used for its intended purpose: Alliance Pipeline Ltd. v. Alberta (Minister of Municipal Affairs) 2006 ABCA 9.

#### Corridor Pipeline MGB 086/04

- Pipeline had not been commissioned with product throughput and remote sensing equipment had not been calibrated or commissioned. MGB found that construction not complete and pipeline unsafe – therefore not capable of being used.
- Decision upheld by the Court of Queen’s Bench: Alberta (Minister of Municipal Affairs) v. Alberta (Municipal Government Board) 2005 ABQB; Affirmed by the Alberta Court of Appeal: 2007 ABCA 217.

#### Alberta Oilsands MGB 034/06

- Pipeline had not been commissioned by product throughput and remote sensing equipment had not been calibrated or commissioned. Again, MGB found that construction not complete and pipeline unsafe – therefore not capable of being used.
- Decision upheld by the Court of Queen’s Bench: Alberta (Minister of Municipal Affairs) v. Alberta Oilsands Pipeline Ltd. 2007 ABQB 652.

## III Equity

Section 293 of the MGA specifies that 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. In the assessment regime, “equity” is used in the sense that similar properties will bear similar assessments. This term applies to market value or regulated assessments. At times, the strict application of the procedures in the Ministers Guidelines might be said to result in an inequity, in that properties that might be assessed similarly due to similar physical or market value related characteristics are assessed differently because those characteristics are not identified as relevant considerations in the procedures to be followed in the regulations. The MGB traditionally has made the distinction that equity, within a regulated regime, is achieved through the correct and consistent application of the procedures and valuation standards in the regulations.

#### GT Group Telecom MGB 135/03

- Certain television companies did not report equipment necessary to permit a data service. The evidence pointed to approximately two to four percent of the value of a cable system not being assessed; therefore the appropriate remedy was to reduce the data component of the assessment



### ASSESSMENT FOR LINEAR PROPERTY

**MGA s. 292(2) Each assessment must reflect**

- (a) *the valuation standard set out in the regulations for linear property, and*
- (b) *The specifications and characteristics of 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 the records of the Alberta Utilities Commission, the Energy Resources Conservation Board, or*
  - (i) *the report requested by the assessor under Subsection (3).*

## III Equity (cont'd)

### GT Group Telecom MGB 135/03 (cont'd from pg. 3)

- of the Complainant by an equal amount. Fairness and equity requires that the MGB consider a remedy and apply the remedy where most appropriate. Because the Respondent could provide only an estimate of the amount of equipment not captured in the cable television assessment, the MGB used the four percent value to ensure that equity was attained.
- Decision was upheld by the Court of Queen's Bench which found that the MGB's decision was not patently unreasonable: GT Group Telecom Services v. Alberta (Municipal Government Board) 2005 ABQB 79.

### Okotoks MGB 089/02

- Fairness and equity is established by the proper application of the Guidelines. All inventory numbers for the electric power systems in Okotoks and Pincher Creek were found to be correct, and the correct depreciation was applied. The role of the MGB is to adjudicate disputes on incorrect or unfair or inequitable assessments within the prescribed legislative framework.

### Pengrowth MGB 009/05

- The MGB considered whether it was appropriate to assess wells that were in fact "gas lift wells" as "crude oil pumping" wells. The Guidelines clearly require gas-lift wells to be assessed as "crude oil pumping". The DLA therefore properly applied the Act and Guidelines in fair and equitable manner. The duty to apply legislated standards fairly and equitably does not empower the DLA (or MGB) to determine whether the standards are themselves fair and equitable.

### Northern Sunrise MGB 68/06; MGB 057/07, and MGB 135/07

- The MGB considered a municipality's complaint concerning assessments based on EUB records that were shown to be inaccurate. Where a party – such as a municipality – cannot change the EUB records and presents clear evidence of error, the DLA's refusal to exercise its discretion to amend the assessment is not a fair and equitable application of the procedures and standards set out in the regulations.

## IV Assessments' Reflection of ERCB Records

Section 292 of the Act specifies that assessments for linear property must reflect the characteristics and specifications of the linear property as of October 31<sup>st</sup> of the year prior to the year in which an assessment is issued, as contained in the records of the Alberta Utilities Commission/Energy Resources Conservation Board (ERCB). Section 293 specifies that 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. Section 322 of the Act specifies that the Minister's Guidelines are deemed to be regulations; accordingly the procedures and valuation standards for assessing linear property found in section 4.000 of the Guidelines must be applied in a fair and equitable manner.

The DLA is authorized to rely on the ERCB records to prepare assessments, however, at times the argument is made that the records do not reflect the actual characteristics of the linear property. This has been said to arise due to ERCB reporting and recording lags, mistakes in the ERCB records, or due to the failure of owners to report and update the characteristics of wells in a timely manner. It has been argued that this results in an inequitable assessment, as wells with similar actual characteristics as of October 31 in the same assessment year may not be assessed similarly due only to the lack of accuracy in the ERCB record.

Note: Prior to January 1, 2008, the ERCB was known as the Alberta Energy and Utilities Board (EUB). The following Decisions pertain to linear property assessment complaints filed prior to this date, and thus refer only to the EUB.

## IV Assessments' Reflection of EUB Records (cont'd)



### Duties of Assessors

**MGA s. 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*

### General Powers of the Minister Relating to Assessments and Equalized Assessments

**MGA s. 322(2)** *Where the Minister considers it advisable to do so, the Minister may by order establish guidelines respecting any matter for which the Minister may make a regulation under subsection (1).*

**s. 322(3)** *A guideline established under subsection (2) is a regulation for the purposes of this Act, but is exempted from the application of the Regulations Act.*

#### Atco Gas MGB 057/04

- An audit of Atco's pipeline system uncovered a number of discrepancies between the EUB records and the actual constructed length of some pipelines, the operational status of pipelines, duplicate licenses, and pipelines that were abandoned or never constructed. The MGB rejected the argument that assessments must be based on actual conditions as opposed to the specifications in the EUB records, noting that the legislation places the onus on the owner to ensure the records of the EUB are accurate.

#### Kneehill County MGB 001/04

- Where there is an inconsistency with the records of the EUB, the DLA must act as the fact finder especially when given evidence that the attribute record is wrong. This is particularly important where it is the municipality claiming that the record is inconsistent, as it has no power to correct the record.

#### Progress Energy MGB 133/03

- The MGB considered whether the actual physical status or utility of a pipeline is a relevant characteristic to consider when determining if additional depreciation is applicable. The MGB found that under the regulated assessment system set out in the Minister's Guidelines, a pipeline is not eligible for additional depreciation unless it has "discontinued" status at the EUB. The actual physical condition was not relevant in this case as the pipeline owner has the ability and the responsibility to change the EUB record to reflect the actual status of the well.

#### Penn West Petroleum MGB 151/03

- Where there is an inconsistency with the records of the EUB, the onus is on the property owner to ensure that the status of a linear property is properly reflected in the records of the EUB. Where no reasonable efforts are made by a property owner to update the records in a prompt manner, the DLA is entitled to rely on the record of the EUB, even in the face of evidence of inconsistency.

#### Apache Canada MGB 154/03

- The MGB considered whether a pipe attached to an abandoned well should be granted the same depreciation that Minister's Guidelines require for pipelines registered as "discontinued" at the AEUB. The MGB found the DLA had applied the Minister's Guidelines criteria correctly and consistently using the information available at the EUB. The property owner was not without remedy, as it had the ability and responsibility to register its pipe with the EUB as "discontinued".

#### Atco/Assessment Advisory Group MGB 159/03

- The MGB considered whether pipelines attached to "abandoned" wells should be granted the same depreciation that Minister's Guidelines require for pipelines attached to "non-producing" wells. The MGB found that the DLA had applied the Minister's Guidelines criteria correctly and consistently using the information available at the EUB. The MGB again noted that the property owner was not without remedy, since it had the option to register its pipe with the EUB as "discontinued".

#### Northern Sunrise MGB 068/06; MGB 057/07; MGB 135/07

*[3 separate assessment year complaints dealing with the same issues: 2004, 2005, 2006]*

- The MGB considered a municipality's complaint concerning assessments based on EUB records that were shown to be inaccurate. The MGB found that the AEUB records were incorrect and, therefore, the conclusions as to well status for assessment purposes, drawn from these records, were also incorrect. A municipality has limited ability to change the EUB record as this is the responsibility of the property owner. Where it is a municipality claiming an error in the EUB record, the DLA must act as the fact finder especially when given evidence that the attribute record is wrong.



### 2005 Alberta Linear Property Assessment Minister's Guidelines

#### 4.009 Process for Determining N\* in Table 4.9

- (a) Identify the well status descriptions with the largest associated true vertical depth.
- (b) n\* for the linear property is the least of
  - i) total depth
  - ii) true vertical depth
  - iii) deepest shoe depth
  - iv) plug back depth s. 4.009 (cont'd)
  - v) bottom of the deepest producing interval, or
  - vi) bottom of the latest deepest perforation interval depth (only if there is no deepest producing interval)

as contained in the EUB or the RFI for the Well statuses identified in 4.009(1) where the depth does not equal zero (0).

## IV Assessments' Reflection of ERCB Records (cont'd)

### Northern Sunrise MGB 135/07

[2006 assessment year complaint]

- Additional issue regarding a pipeline that physically existed and was producing but was not recorded in the EUB records, and therefore was not assessed. The MGB found that the assessor has a mandatory duty under s. 4.002 of the Guidelines to request information from an owner to enable it to issue an assessment in these types of cases.

### Kneehill County – the “Landlink” decisions - MGB 091/05; MGB 100/05

- The MGB considered the conflict between the “attribute” record and the “graphical” record. Independent evidence was led to suggest that the graphical record was most likely correct. A municipality has limited ability to change the EUB record as this is the responsibility of the property owner. The MGB found that in such circumstances, fairness and equity required changing the assessments to reflect the (graphical) EUB records known to be correct.

### BP Canada MGB 115/05

- The MGB considered whether EUB shut-in orders are EUB records that must be considered when determining assessments for wells and pipelines. The MGB found that although EUB shut-in orders are EUB records, the Minister's Guidelines do not contemplate additional depreciation due to shut in orders. Hence, the assessor was found to have applied the standards and procedures as set out in the Regulations and Minister's Guidelines correctly and consistently, and thus fairly and equitably.

### Apache et al MGB 020/07 and DL 112/07—“Well Depth 2006” Decisions

[“clarification” of 020/07]

- The MGB considered: 1) whether the well depth reflected in EUB records for some 11,000 wells did not match the actual depth at which production occurred because the assessment did not take into account oil and gas flow prevention devices as contained in the EUB records (the assessor preferred the EUB record that did not contain information about these devices); and 2) whether the assessment should reflect the actual characteristics of the property as of the assessment date or the EUB records as of the assessment date. There was evidence before the MGB that due to EUB reporting / recording time lags or other reporting discrepancies, the records as of the assessment date did not always reflect the actual characteristics of the property as of the assessment date.
- The MGB found that flow prevention devices must be taken into account in determining the deepest producing interval at which well depth is to be measured. The MGB further found that the assessment should reflect the actual characteristics of the property as of the assessment date, and that the EUB records at times did not reflect this. The MGB maintained that it was the responsibility of the owner to report changes to wells to the EUB in a timely manner, however the MGB noted that the EUB provides a reporting grace period of 30 days to capture changes made to wells. The MGB felt this would be an adequate time limit from the assessment date for companies to report changes to wells to the EUB such that any time lag or reporting discrepancy would be accounted for, without unduly interfering with the assessors mandate to issue a timely assessment. This time limit would help ensure that the records of the EUB would be consistent with the actual characteristics of the wells which would in turn be correctly reflected in the assessment..

### Apache et al DL 028/08

[“clarification” of 020/07]

- A Decision of the MGB providing further clarification of collateral issues arising from the direction in MGB 020/07 relative to point in time that the EUB record should be used in the assessment of two wells where ACC and Pool Code differed in the EUB records between October and November.



**2007 Alberta Linear Property Assessment Minister's Guidelines s. 2.003 Depreciation (Schedule D Factors) For ACCS beginning with GEN**

**(b) Schedule D depreciation for ACCs beginning with GEN is only allowed for circumstances not considered in Schedule C on a case by case basis when acceptable evidence is documented and provided to the assessor. Schedule D depreciation is limited to highly unusual site-specific circumstances such as catastrophic failure.**

## IV Assessments' Reflections of ERCB Records (cont'd)

### Apache et al DL 028/08 (cont'd)

- The MGB directed the use of the November EUB General Well File record (GWF) to determine ACC, and directed the use of the October GWF to determine the proper pool code for LPAU-ID 3480996.
- The determining factor that justified the use of the November GWF was a *change made to the well* on or before October 31, 2005 which was not reported until after October 31, 2005, and thus not present in the October GWF. A change in pool code is primarily controlled by a decision of the EUB, which may be captured in the EUB records after October 31, 2005. The direction in the MGB 020/07 is applicable to the determination of The Assessment Classification Code (ACC) but not applicable to the determination of pool code as the pool code did not change until after October 31, 2005.

## V Extra Depreciation Under Schedule D

The Minister's Guidelines use the formula  $A \times B \times C \times D$  to generate assessments. Schedules A and B generate a modified base cost, while Schedules C and D identify depreciation. Schedule C depreciation is laid out in specific tables. However, in some cases the DLA has discretion to apply additional depreciation under Schedule D. The following decisions arose from disputes over the DLA's refusal to grant additional depreciation under Schedule D. They raise interpretive issues as to what kinds of losses in value are available under Schedule D. These issues are complicated somewhat by changes in the wording of the Minister's Guidelines that occur from year to year.

### Talisman Energy MGB 129/99

- Schedule D depreciation (apart from W policy) does not apply to pipelines.

### Corridor MGB 086/04

- Schedule D depreciation does not apply to new and untested lines.
  - ATCO (117/05)
  - Pan Canadian (039/06) (Judicial Review outstanding)
  - Pan Canadian (MGB 036/07) (Rehearing outstanding)
- Schedule D depreciation for a power generation plant under the Minister's Guidelines does not entitle the taxpayer to receive a reduction to market value where market value is lower than the Schedule C depreciated value. The Minister's Guidelines create a regulated assessment regime allowing for predictability in assessment and are not dependent on market value.

## VI More Schedule D Depreciation/W Policy/Equity

The Minister's Guidelines allow additional Schedule D depreciation for pipelines that begin in a legal subdivision where there is a non-producing well. The following decisions arose from disputes over whether this "W Policy" depreciation can be applied fairly to certain pipelines, or whether it creates inequitable assessments, contrary to section 293(1) of the MGA.

### Two Hills MGB 099/03

- W policy depreciation applies to pipelines beginning at producing wells, so long as there is a non-producing well in the same subdivision. The principle of fair and equitable assessment in a regulated context means that the DLA must apply the Minister's Guidelines correctly and consistently – not that the Guidelines themselves must be fair.



### Correction of Roll

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

- (a) the assessor may correct the assessment roll for the current year only, and
- (b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.

## VI More Schedule D Depreciation/W Policy/Equity

### Deloitte & Touche represents various Complainant v Calgary MGB 161/03

- The DLA may use the surface location of a well as the “from” location for a pipeline when applying the “W” policy.

### Wilson Laycraft reps various Apps v DLA MGB 168/01

- W Policy depreciation applies to pipelines attached to abandoned wells, even if the pipelines themselves are still recorded in the EUB records as operational; especially in the case of applying the PLW code the DLA must carefully examine the AEUB records to determine where there is a non-producing well (discontinued or abandoned) with pipeline attached. Also, abandoned pipelines eligible for 100% depreciation should not receive only 90% W policy depreciation simply because they originate at a producing well.

## VII Changing Errors in the Roll (and Equity)

### Two Hills et al MGB 134/03

- Section 305 is a way to challenge whether or not a property is assessable, by bringing the missed property to the attention of the DLA, without actually having to file a complaint to challenge the assessability of the property. The DLA discovered that no assessments had been issued for some of the properties under complaint while a valid Section 305 request was before it. The lack of action on the part of the DLA in response to this discovery constitutes a demonstrated refusal to comply with its legislated duties under the Act. The MGB ordered the assessment of the missed pipelines and that the necessary changes be made to the assessment rolls.

### Northern Sunrise MGB 135/07

- Section 4.002(b) of the Minister’s Guidelines specifies that a Request for Information (RFI) must be requested from an owner of an unlicensed pipeline that is not registered with the EUB. The assessment must then be prepared based on the information in the RFI.
- The evidence before the MGB was that the pipeline in question was linear property as of October 31, 2006, but not registered with the EUB. It was therefore assessable, and should have been assessed by the DLA using an RFI in accordance with the procedures in the Minister’s Guidelines. The DLA was ordered to add the pipeline to the assessment roll and prepare an assessment for the pipeline.

### City of Calgary MGB 019/07

- Section 303 (a) of the Act requires there to be a sufficient description of the location of linear property on the assessment notice. Although there had been a breach of section 303(a) of the MGA, the effects of this breach are neither dramatic nor far reaching and an order to correct the roll would be of no practical use or effect.
- Without deciding whether MGA section 303(g) applies to linear property, there was no evidence that the Respondent failed to indicate on the linear assessment notices and linear assessment roll whether property is assessable for public or separate school purposes pursuant to section 303(g) of the Act. Accordingly, no order to correct the roll was made.



### Decisions of the Board

**MGA s. 499(1) on concluding a hearing, the Board may make any of the following decisions:**

- (a) dismiss a complaint or an appeal that was not made within the proper time;
  - (b) make a change with respect to any matter referred to in section 499(1), if the hearing relates to a complaint about an assessment for linear property;
- (2) The Board must not alter
- (a) any assessment that is fair and equitable, taking into consideration assessments of similar property in the same municipality.
- (3) The Board may, in its decision,
- (a) include terms and conditions, and
  - (b) make the decision effective on a future date or for a limited time.

## VIII Pipe Size (and Equity)

### Beaver County MGB 138/01

- The MGB considered whether the manner in which the DLA was applying the valuation standards in the Guidelines was fair and equitable. It found that when pipe with dimensions of 609.6 and 611 mm are assessed at different rates fairness and equity is not achieved. In this type of “step-down” approach adopted by the assessor, 609.6 mm pipe will be assessed as 559 mm pipe at a rate of \$204,600 per km instead of a rate of \$257,200 per km. This results in pipe actually sized at 559 mm assessed at the same rate as larger pipe. This was neither fair nor equitable when the schedule sets out rates for larger pipe being assessed at higher rates. Although the Assessor argued that he applied the step-down approach consistently across all properties in the municipality, this consistent application could not provide equity, as it was not based on a correct interpretation of the schedule in the Guidelines.

## IX Exemptions in section 298/362/376(1) of the MGA

The MGA provides exemptions from assessment or taxation for certain property types. The following decisions arose from disputes concerning the interpretation of these exemption provisions.

### Shaw Cable MGB 123/97

- Section 376(1) prohibits business tax on “premises” housing linear property or M&E that is already subject to property tax. The Board found that “premises” housing linear property do not include portions of a building where the linear property is not located. Thus, business tax can still attach to these areas. (MGA Section 376(1))

### Videotron Communications 168/97

- Areas outside the head-end room and directly related area did not house linear property. Such areas (e.g. storage rooms and areas where signals were reconfigured) were not “premises” exempt from business tax under section 376(1) of the MGA.

### Irrigation Canal Power Co-op MGB 218/96

- Power generation plants grafted onto an irrigation system selling power into the grid did not qualify for exemption from assessment as irrigation works under section 298(1)(c).
- Decision of MGB not to grant exemption upheld by Court of Queen’s Bench: Irrigation Canal Power Co-operative Ltd. v. Warner (County No. 5) 1998 ABQB 170.

### City of Edmonton v. Municipal Affairs MGB 31/97

- Street lighting owned by the City of Edmonton was exempt from taxation under MGA section 362(b).

### Paintearth Gas Co-op MGB 020/99

- A gas distribution system serving the Village of Gadsby qualified for an exemption from assessment under MGA section 298(1)(r).

## X Procedural/Jurisdictional Matters - MGA

The Board must interpret the MGA and subordinate legislation to determine whether it has jurisdiction over matters before it. It must also apply the principles of natural justice and procedural fairness in exercising that jurisdiction. Finally, the Board must interpret the legislation to determine whether the DLA has acted within his or her legislated powers. The following decisions concern issues of jurisdiction and procedure raised during the course of linear property assessment complaint proceedings.



### Complaints About Linear Property

**MGA s. 492(1) a complaint about an assessment for linear property may be about any of the following matters, as shown on the assessment notice:**

- (a) the description of any linear property;
- (b) the name and mailing address of an assessed person;
- (c) an assessment;
- (d) the type of improvement;
- (e) school support;
- (f) whether the linear property is assessable;
- (g) whether the linear property is exempt from taxation under Part 10.

**(1.1) Any of the following may make a complaint about an assessment for linear property:**

- (a) an assessed person;
- (b) a municipality, if the complaint relates to property that is within the boundaries of that a municipality.

## X Procedural/Jurisdictional Matters - MGA (cont'd)

### Talisman MGB 030/00

- The Board has jurisdiction to decide whether a linear complaint is barred by section 295 owing to failure to provide information requested by the Minister.

### Merit Energy MGB 150/00

- An incomplete complaint filed with the Board (where no further attempt was made to complete it) was not valid, but did not warrant a costs award as an abuse of process.

### Yellowhead County MGB 072/02

- Linear complaints that did not contain the information required under section 491(2) of the MGA were incomplete, and would not be considered unless the Complainant provided the necessary information within a specified time extension.

### 925011 Alberta Ltd. et al MGB 058/03

- The DLA may apply a depreciation factor to wells that produce both gas and oil despite the absence of a depreciation factor for such wells in the Minister's Guidelines.

### Union Pacific MGB 247/98

- Three thousand individual complaints filed with the same reason for appeal meet the filing requirements, and should be scheduled for a hearing. However, the complaints could constitute an abuse of process.

### Alta Gas MGB 190/99

- A contract well operator was the proper assessed person since it controlled operation of the wells and was permitted to keep records, thus meeting the definition under MGA section 284(1)(p)(iv) and the Oil and Gas Conservation Act Regulation.

### Calgary Equalized MGB 076/06; Allstream MGB 094/06; Allstream MGB 011/07; GT Group Telecom MGB 125/06 Calgary Linear MGB 019/07

- The Minister's Guidelines set valid assessment valuation standards for regulated property. Where the same matter has been decided between the same parties in a prior hearing and no new evidence has been put forward, the MGB will not alter its previous decision.

### Northern Sunrise MGB 135/07

- The MGB has jurisdiction to determine whether linear property is assessable. Therefore, it may deal with a complaint regarding a non-assessed property even if the DLA has not prepared an assessment notice.

### Apache et al DL 112/07

*Judicial Review Application Pending*

- If an applicant fails to present evidence at a hearing, there is no obligation to re-open or rehear a case based on additional evidence that a party wishes to introduce after the hearing has ended, particularly where the procedures for requesting a re-hearing have not been followed.

### Apache et al DL 029/08

*[continuation of 020/07 relative to remaining LPAU-IDs not directly considered in 020/07]*

- This matter involved linear property assessment complaints for some 12,000 wells, of which a sample of 500 complaints were selected by the Complainants as being representative of the issues in the rest of the population. A week long merit hearing was held in October of 2006 to decide several issues with respect to the 500 wells. The MGB decided those issues in MGB 020/07. The main issue in DL 029/08 was to decide whether the findings and direction in the MGB 020/07 pertaining to the issues affecting the 500 remaining wells in the sample can be applied to the issues affecting the rest of the wells in the population.

## X Procedural/Jurisdictional Matters - MGA (cont'd)

Apache et al DL 029/08

[continuation of 020/07 relative to remaining LPAU-IDs not directly considered in 020/07]

- The process of using a selection of properties that exemplify the common facts and issues in a larger group is a process that has been followed in the past by the MGB for large volume complaints, with the results from the hearing of a few being applied to the many. When used in the appropriate circumstances, a determination on the issues for some yields the same results for the others, given the uniformity of issues and relevant facts from which the issues are derived. Given the Respondent's sometimes ambiguous, sometimes oppositional position as to this process, it is difficult to accept the argument that by proceeding in this manner, the MGB defied any reasonable or legitimate expectations claimed by the Respondent. Furthermore, the time limitations within the MGA favour efficiency in the MGB decision making process, and it is thus acceptable for the MGB to adopt issue based hearings, particularly where several thousand complaints on the same issue are before it. It would be repetitious and redundant to hear the same issue for each property under complaint.
- The MGB found that it had jurisdiction to proceed with the above process. There was uniformity in the issues and relevant facts across wells in each of the remaining issue groups. The evidence of the Respondent did not disprove this fact. The argument and evidence entered through the Respondent's witnesses did not satisfy the MGB that a valid reason existed not to apply the findings in MGB 020/07 and DL 112/07.

### **Important Note Regarding Linear Property Legislation**

*This document consists of MGB decisions, legislation, and other information that has been collected and prepared for users' convenience, and uniquely for informative purposes only; it is in no way legal advice and should in no way be relied on for that purpose. Despite the care taken in preparing this document and maintaining this website, the Government of Alberta and the MGB, their employees, managers and other officers, can in no way be held responsible for damages caused directly or indirectly by use of this document, the MGB website, or by its non-availability.*

*The foregoing Decisions of the MGB are based on the relevant legislation (Act, Regulations, and Minister's Guidelines) in force at the time of the Decision. Legislative change has had a significant effect on the decisions of the MGB pertaining to Linear Property Assessment Complaints from one assessment year to the next. Readers are encouraged to stay up to date on the relevant legislation when considering the above decisions. For further information about the legislation currently in force pertaining to Linear Property Assessment Complaints, please contact the MGB at 422-8173.*



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