LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Canadian Natural Resources Limited v Provincial Assessor, 2021 ABLPRT 623

Date: 2021-11-15
File Nos.: DIP18/CNRL/WILS-01; DIP19/CNRL/WILS-01; DIP20/CNRL/WILS-01
Decision No.: LPRT2021/MG0623

The Municipal Government Board ("MGB") is continued under the name Land and Property Rights Tribunal ("Tribunal"), and any reference to Municipal Government Board or Board is a reference to the Tribunal.

In the matter of a complaint filed by Wilson Laycraft on behalf of Canadian Natural Resources Limited concerning its Designated Industrial Property assessments heard commencing Wednesday, November 18, 2020 and concluding Friday, December 4, 2020 (excluding Tuesday, November 24, 2020 and Wednesday, November 25, 2020).

BETWEEN:

Canadian Natural Resources Limited

Complainant

- and -

The Provincial Assessor

Respondent

BEFORE: D. Roberts, Presiding Officer
I. Zacharopoulos, Member
M. Dennis, Member
(Panel)

P. Gill, Case Manager

DECISION

Overview

[1] Canadian Natural Resources Limited filed a complaint on 429 (2018 Tax Year) and 1,129 (2019 Tax Year) of its designated industrial properties (facilities, compressors, processing stations). These properties span over 52 municipalities and involve natural gas production.

[2] The Complainant submits the properties are entitled to additional depreciation under Schedule D of the *Minister's Machinery and Equipment Assessment Guidelines*, since the standard depreciation allowed under Schedule C of the *Guidelines* does not reflect losses in value that natural gas facilities have suffered as a result a sustained period of decline in productivity and profitability. It is submitted that Schedule D allocation is warranted to recognize the additional loss in value caused by the ongoing economic difficulties the industry is experiencing.

[3] The Respondent submits that the *Minister's Guidelines* are not intended to reflect market value or fluctuation in market value caused by economic conditions. It says all economic obsolescence is captured in Schedule C, and Schedule D is only intended to capture abnormal depreciation from other causes on a site specific basis.

[4] The panel agreed with the Respondent that market value and regulated value under the Guidelines are distinct, and Schedule D is not intended to capture all fluctuations in market value caused by varying economic conditions. On the other hand, the Guidelines do not specifically disqualify Schedule D adjustments owing to additional losses in value caused by economic conditions; accordingly, any form of abnormal obsolescence not covered under Schedule C could attract further depreciation under Schedule D, including abnormal obsolescence caused by economic conditions. In addition, the Panel found that the loss must be site-specific, permanent, or long term, unexpected, affecting financial performance, material, and attributable to abnormal physical, functional, or economic obsolescence. In this case, the panel found the Complainant failed to establish or quantify any additional loss in value suffered by the properties under complaint.

BACKGROUND

[5] The subject properties (1,558) under complaint are facilities, compressors, processing stations with individual assessments and span over 52 municipalities. All are involved in natural gas production and are assessed as nonlinear designated industrial properties.

[6] The Complainant is seeking an additional depreciation allowance in the assessment of its various natural gas properties. The reduction is being sought to account for a general economic downturn in the industry for both machinery and equipment and buildings and structures; the land assessments are not being challenged.

[7] The Respondent has argued that all depreciation has been accounted for whereas the Complainant argues that they have not received adequate Schedule D depreciation that reflects the loss in value that has been suffered.

[8] The Applicant, Canadian Natural Resources Limited (CNRL) filed complaints about the 2018 and 2019 assessments for certain of CNRL's designated industrial property. Due to issues concerning COVID-19, the hearing was postponed on March 13, 2020 (Notice of Decision dated March 20, 2020) and rescheduled to be heard June 1, 2020 to June 19, 2020.

[9] The Applicant and Respondent (the Parties) later advised of certain conflicts and by mutual agreement, the Parties agreed that the hearing would be further adjourned, to be heard from November 18, 2020 to December 4, 2020.

[10] The Parties agreed that one or more preliminary hearings would be beneficial to streamline the merit hearing process by dealing with certain preliminary matters in advance of the merit hearing. An initial hearing took place on September 11, 2020 and a second hearing occurred on October 19, 2020. The MGB Panel was acceptable to the Parties, and the Panel advised it would be seized of the matter going forward.

[11] The decisions of the preliminary hearing were verbally communicated to the Parties at the commencement of the merit hearing on November 18, 2020, with the written decisions to form part of this Board Order. The MGB panel heard from the Parties commencing on Wednesday, November 18, 2020 and concluded Friday, December 4, 2020 (excluding Tuesday, November 24, 2020 and Wednesday, November 25, 2020).

[12] A list of the properties under complaint is attached as Appendix 1.

[13] The parties agreed on the Exhibit List, which is attached as Appendix 2.

PRELIMINARY HEARINGS AND ISSUES

[14] The parties raised numerous procedural issues both at preliminary hearings held before the merit hearing and at the merit hearing itself. These issues are discussed in Appendix 3.

ORIGINAL AND REQUESTED ASSESSMENTS

[15] The Applicant requested the following amended assessments:

Taxation Year 2018 (2017 Assessment Year)

	Original Assessment	Requested Assessment	Revised Requested Assessment
Land	$ 6,514,790	$ 6,514,790	$ 6,514,790
Buildings	$ 29,046,090	$14,523,045	$27,604,131
M&E	$101,368,690	$50,684,345	$50,684,345
TOTAL	**$136,929,570**	**$64,840,565**	**$84,803,266**

Taxation Year 2019 (2018 Assessment Year)

	Original Assessment	Requested Assessment	Revised Requested Assessment
Land	$ 11,945,950	$ 11,945,950	$ 11,945,950
Buildings	$164,309,360	$ 82,154,680	$144,008,402
M&E	$621,371,770	$310,685,885	$267,036,645
TOTAL	**$797,627,080**	**$404,786,515**	**$422,990,997**

ISSUES

[16] The issues to be determined by the Board are:

I. Should the Board accept the recommendations of the parties to amend the rolls for certain buildings and structures as recommended in Exhibit R46?

II. What kind of evidence is "acceptable evidence" in support of an additional depreciation adjustment under Schedule D? To consider the issue, the Board determined it was necessary to separate the issue into two questions. Schedule D additional depreciation is based on depreciation not reflected in Schedule C. Therefore, it is important for the Board to determine what depreciation is considered in Schedule C. The two questions arising are:
   a. What depreciation components are included in Schedule C? and
   b. What conditions are relevant when considering additional depreciation under Schedule D?

III. If there is the basis for additional depreciation, what is the basis and extent for the additional depreciation?

SUMMARY OF APPLICANT'S TESTIMONIAL EVIDENCE

CNRL Evidence and Rebuttal (CNRL Report and Rebuttal) – David Pole

[17] Mr. David Pole is a Professional Engineer and a Vice President – Production Central with CNRL. The Parties agreed that he was a factual witness. Mr. Pole testified that he had operational responsibility for about 90% of the properties under complaint.

[18] The reports Mr. Pole spoke to were Exhibits C3.1, C34 and C47.

[19] Mr. Pole identified that the roll numbers under complaint are the most significant underperforming assets of the CNRL properties. It was Mr. Pole's opinion that while 493 rolls in the 2017Assessment Year (AY) and 1,129 rolls in the 2018AY were subject to complaint, there was significant commonality amongst the assets and as such, Mr. Pole considered that the complaints were "site specific".

[20] Mr. Pole identified the locations of the properties under complaint with a map of Alberta and the locations marked. The properties were placed into three (3) groupings by CNRL. Those were as follows:

a. Zone A – Southern Alberta Shallow Dry Gas (typically shallow wells less than 1,000 metres in the Taber and Medicine Hat areas) - low productivity where numerous wells (8-16/section) are necessary to maintain the pressure to keep gas plants operating. Predominantly dry gas with no liquid production. This Zone is the most challenged of the three (3). There are nominal new gas plants added and the number of gas plants being shuttered is increasing. This zone has seen the number of wells and production fall sharply since 2006.
b. Zone B – North-East Alberta Conventional Dry Gas (typically 1,000 metre wells north of Red Deer) - deeper wells and more sophisticated equipment. The wells (4/section) have higher pressure and must deal with the separation of water. A large amount of equipment is surplus to needs (separators) and CNRL is attempting to circumvent that equipment. The wells are operating at a financial loss; however, it is less costly to operate the wells than to shut them in. There are nominal new gas plants added and the number of gas plants being shuttered is increasing. This zone has also seen the number of wells and production sharply fall since 2007.
c. Zone C – Western Alberta Deep Gas (2,500-3,000-metre deep basin wells) - deeper wells with high pressure. Many of the wells have different commodities associated with the well which improves viability (e.g. - ethane and butane). These wells require additional equipment due to higher-pressure issues. The number of new gas plants added, and the number of gas plants being shuttered was weighted to new plants until about 2014 when shuttered wells exceeded new wells. Production is increasing due to exploration for liquid rich gas and the number of wells has been flat and is now beginning to decline.

[21] Mr. Pole testified that almost all the properties under complaint were related to vertical wells with some recent horizontal drilling occurring in Zone C. The properties in Zones A and B were significantly impacted financially while Zone C was not as impacted. Zone C performs better due to the additional hydrocarbons being processed along with gas.

[22] Mr. Pole also provided charts and selected financial information which demonstrated each zone's Net Cash Flow (defined as Revenue – Royalties – Operating Expenses (including property tax and lease payments) – Capital Expenditures) and Total Net Back (defined as net cash flow + capital expenditures). The charts for all zones showed a significant decline in net cash flow and total net back after 2014. In Zone's A and B, the amounts neared break-even; in Zone C, while profitable, results also showed a decline in profitability.

[23] During rebuttal testimony, the Applicant requested withdrawal of the complaints for two gas plants and associated properties. The locations were referred to as Gold Creek Gas Plant and Progress Gas Plant and included associated properties flowing into those gas plants.

[24] Mr. Pole testified that the taxable assessment of CNRL's assets in 2018 was over $22,200 million, requiring payment of over $330 million in property taxes in 97 municipalities. The assets under complaint in these proceedings as a percentage of the total assessment represent 0.6% in the 2018 Tax Year (TY) and 3.6% in the 2019TY. It was Mr. Pole's evidence that the properties under complaint were not profitable

and that the small adjustment being requested might allow CNRL to continue to operate the properties for a few more years. CNRL's guiding principle is to try to make wells profitable rather than shutting them in, due to the costs associated with shutting wells in.

[25] Mr. Pole introduced evidence to demonstrate the assessment amounts for CNRL between 2014AY and 2018AY showed a reasonably unchanged assessment value in the past four (4) years. Overlaid on the chart was the price of gas which showed a significant decrease. Mr. Pole opined that the assessed value does not reflect the economics being faced by the sector.

[26] Mr. Pole testified that prior to 2009 the average price for natural gas was about $7/gigajoule (gj). Since that time, the price has been substantially lower and in certain extreme cases, gas was sold in negative values (pay to take) to alleviate pipeline capacity issues and maintain the extraction of other products at the same time as gas. A chart was provided to evidence the price of gas and the decline post 2009 to sub $4/gj. Further charts were provided to demonstrate that the forecast pricing of gas remains sub $4/gj.

[27] Mr. Pole provided a chart to demonstrate the relationship between USA gas (priced on the New York Mercantile Exchange (NYMEX)) and Canadian gas (priced on the Alberta Energy Company (AECO-C virtual hub)). Mr. Pole testified that prior to 2017 the two tracked close to one another, with differences primarily based on transportation costs. Post 2017, the price points became more divergent and sometimes there was a $2/gj difference between the US and Canada, with Canada being the lower price. The difference amounts to a 35-50% discount to Alberta producers.

[28] CNRL is significantly affected as its production is approximately 1.6 billion cubic feet/day (bcf). The total Alberta gas production is approximately 10.7 bcf; however, the industry has the capacity to produce 25 bcf/day. The industry cannot produce to that level due to the lack of pipeline capacity as the current daily production is keeping pipelines operating at near full capacity.

[29] CNRL, as well as other producers, have curtailed their new vertical gas well drilling programs. Mr. Pole opined that prices over $4/gj would be required to initiate any substantial drilling programs.

[30] Mr. Pole also opined that Alberta is disadvantaged compared to the USA in terms of regulatory hurdles, tax burdens and costs including orphan well obligations. It was Mr. Pole's opinion that the Canadian regulatory regime over the last four (4) years has not been supportive of the industry and as a result the challenges are not temporary in nature.

[31] The primary causes of the decline in gas prices were summarized by Mr. Pole as follows:

a. Fracking commenced in about 2008 and has significantly evolved;
b. Horizontal drilling is more prevalent whereas in the past vertical drilling was the standard;
c. The United States drilling has expanded to where the USA is becoming closer to self-sufficiency in gas, negating the need for imported gas;
d. Shale gas finds are more prevalent in Alberta and where oil is being pursued, gas is being produced as a side product, and where the gas is "given away" to sell the oil;
e. Alberta gas is land-locked and has limited market access. The access is limited by only having two primary pipelines – the most significant flow being east/south. There is also a pipeline that flows west;

f. Alberta costs for transportation to the market are approximately $0.50/gj; and
g. The assets under complaint are largely older vertical wells and supporting infrastructure. As noted, vertical drilling is being pushed out of the market by horizontal drilling where feasible.

[32] Mr. Pole then commented on the other challenges facing the Alberta gas industry and noted the following:

a. Loss on investment – Mr. Pole suggested that there has been a $40 billion reduction in investment activity in the oil and gas sector in Canada. Conversely, the USA is seeing an increase in investment. A chart was provided to demonstrate that USA production is up significantly, and Canada's is down. Investors looking for return on investment are faced with Canadian margins of between 2-7%, which is a very low return on investment compared to other industry;
b. Insolvency – Mr. Pole identified 51 businesses having recent economic ties to CNRL that have undergone some form of insolvency. A chart of mining and gas insolvencies was also provided. In addition, as an example Mr. Pole noted that the City of Medicine Hat, which owns its own gas business, recently announced they planned to abandon 2,000 of approximately 2,500 wells it owns;
c. Share value decline – not only for CNRL but also for peers in the industry. Evidence was provided that between 2013 and 2019 the average share price of gas weighted businesses was down by approximately 73%. It was Mr. Pole's opinion that if gas prices were overlaid to the stock prices, the reduction in stock price would mirror the decline in gas prices. In addition, Mr. Pole provided a chart of some oil and gas entities to demonstrate that the market capitalization of the businesses identified had decreased from $50 billion to $21 billion. Eight (8) businesses were removed from the Standard and Poor/Toronto Stock Exchange index because of their reduced market capitalization;
d. Land sales – reduced land sales and sales at lower values are evidence of the industry not expanding;
e. Mergers and acquisitions – fewer in number and at lower transaction values;
f. Abandoned wells – increased costs associated with paying for well abandonment of CNRL's own wells, as well as a share of those of insolvent entities (orphan wells). Prior to 2014, CNRL contributed approximately $2 million/year towards the orphan well fund, which has increased to $14 million/year; and,
g. Accounts Receivable – CNRL has been affected where payments from joint venture partners, which historically were in the 90-day range, are increasing to much longer payment ranges. This is evidence of stretching of cash flow in the industry, to a point where its accounts receivable has more than doubled between 2017 and 2019.

[33] Mr. Pole also provided statistical information to demonstrate that the number of wells being drilled in each zone (all companies) to replenish production, has decreased significantly since 2003 with a sharp decline in 2008 and subsequent. He also provided statistical information related to the number of wells abandoned and wells reclaimed, also sharply increased in each zone (all companies) and increasing since 2013. Mr. Pole testified that reclamation typically occurred about four years after abandonment.

[34] In rebuttal testimony, Mr. Pole challenged the discussion introduced by Dr. Thompson in Exhibit R13 regarding the typical decay of production flow rates. Dr. Thompson's opinion was that the flow rates he calculated for three gas plants (Seiu Lake, Marten Hills and Dunvegan) showed natural decay as expected for 40+ year old plants. Mr. Pole's position was that Dr. Thompson had calculated the data based on a "closed reservoir" and did not consider the full plant life. Mr. Pole argued that a closed reservoir analysis would be typically applied to wells as opposed to a gas plant. Wells would naturally decline whereas gas plants when built would be built with replenishment affected by drilling additional wells. Mr. Pole also noted that the full plant life should be considered rather than truncated information being used. For example, Dr. Thompson's chart for Marten Hills began in 2000; however, the plant was commissioned in the late 1960's.

[35] Dr. Thompson's report was also critical of the statistical sampling undertaken by Mr. Beatty. Mr. Beatty largely relied on three (3) gas plants and observations of 32 total properties. Mr. Pole advised that he has personally seen approximately 30% of the properties under complaint and had oversight for approximately 90% of the properties under complaint. In Mr. Pole's opinion, the sample size could have been expanded; however, including additional assets would not provide better information to inform the decision. Mr. Pole also testified that CNRL initially advised Mr. Beatty as to which assets should be reviewed. The selection process was to gain a representative sample from each group of properties, a representative selection of machinery and equipment (M&E) assets and logistically allow the assets to be viewed within the time frame allotted for by CNRL.

[36] It its rebuttal report, Mr. Pole prepared a chart for the 2018TY and the 2019TY to support the requested amendment of assessment to M&E of 50%. The chart included the assessed value of the assets under complaint broken into "Plants, Compressors, Wells and Other" and applied a percentage of the total assessment to the zone. From that group CNRL selected a sample size and determined a utilization factor – in the case of plants based on throughput and for compressors based on horsepower utilization. The utilization factor was applied to the assessment under complaint, and a proposed assessment value was calculated. During Mr. Pole's testimony he confirmed that the line item "Wells" should be excluded, and the revised assessments required amendment. Mr. Pole suggested that the calculations supported the 50% reduction to M&E requested. Mr. Pole also confirmed under questioning that he had not provided any support or other backup information to allow for his calculations to be reviewed.

[37] Mr. Pole testified that the M&E assets have nominal value after they are no longer required. Data was provided comparing recouped amounts based on all methods of disposal. Mr. Pole opined that the information demonstrated that the achieved recoveries were nowhere near the assessed value of the equipment.

[38] A schedule representing gas property acquisitions in 2017 and 2018 by CNRL was provided and Mr. Pole noted that many of the acquisitions were for extremely low purchase prices. In addition, the value of the transaction was compared to the assessment of the properties (building and structures and M&E) and the transaction price was significantly lower than the assessed value of the assets.

[39] Mr. Pole summarized CNRL's position (Exhibit C47) as follows:

a. "The significant change in the economics circumstances of the gas industry in the last years has affected the market forces of supply and demand that have diminished influence the value of gas properties.
b. Declining gas prices, excess gas supply in North America, price differential due to market constraints and high regulatory burden has placed Alberta Gas industry in a sustained adverse economic scenario.
c. Long term forecast of the gas prices in the future shows a steady trend with low prices around $2/gj. Despite seasonal rally gas prices, AECO prices will stay low.
d. The high rate of insolvent companies, diversion of investment, decreasing land sales, high orphan well counts, and outstanding accounts receivable are clear symptoms of a long-term challenging scenario for the Alberta gas industry. All these matters have a direct influence in the value of gas companies.
e. Negative cash flows, equipment sales or the lack thereof, and transactions for gas properties are all indications of a significant loss in value.
f. The market forces have negatively influenced the operation of Canadian Natural's fields under complaint creating a very challenge economic scenario. The value of the assets related to these fields has decreased significantly, and the loss in value should be reflected in the assessed value of each of the properties that are the subject of the complaint."

Deloitte LLP Evidence and Rebuttal (Deloitte Report and Rebuttal) – Rob Koller

[40] Mr. Rob Koller is a Chartered Accountant, Chartered Professional Accountant, Chartered Business Valuator, and a Partner with Deloitte LLP. The Parties agreed that he is an expert witness in business valuations.

[41] The Deloitte reports Mr. Koller spoke to were Exhibits C5.1, C6.1 and C35.

[42] Mr. Koller testified that the engagement was to provide a Calculation Valuation of the market value of the assets in Zones A, B and C. To do so, Deloitte prepared two (2) reports, one as on July 1, 2017 for Zones A and B and the other on July 1, 2018 for all three (3) zones. The valuations included all the CNRL assets in the respective Zones and were not limited to the assets under complaint. Mr. Koller indicated that the assets included oil and gas reserves, linear property as well as the designated industrial property. It used similar methodology in preparing both reports.

[43] In questioning, Mr. Koller confirmed that Chartered Business Valuators can consider various types of valuation reports. The options are a Calculation Valuation, an Estimate Valuation, and a Comprehensive Valuation. The Calculation Valuation method has the lowest level of assurance and the Comprehensive Valuation the highest level of assurance.

[44] In preparing the Calculation Valuation, Mr. Koller confirmed that the information relied on was largely obtained from CNRL, who in turn confirmed it used Sproule Engineering's independent oil and gas reserves reports. The information was based on what was known and knowable on the valuation date. The valuation was based on the value of oil and gas reserves and related assets based on the discounted cash flow method, where the cash flows expected to be generated over the life of the reserves are forecast, related

operating expenses are deducted, income tax is considered, and the cash flow is risk adjusted to a present value. Deloitte applied the risk adjustment to consider the long-term nature of the forecasts, and it was based on its professional judgement to calculate a high and low value estimate for each Zone for the respective period.

[45] Mr. Koller confirmed in questioning that Deloitte did not audit or otherwise verify the information from the Sproule Engineering reserve reports, nor financial or other information provided by CNRL. It relied upon a management representation letter executed by CNRL that the information provided to Deloitte was correct, was reasonable and representative of management's best estimates. However, Mr. Koller also testified that Deloitte would never audit independent reserve engineering reports and that Deloitte would rely upon them for accuracy given the reserve engineer's expertise in preparing such reports.

[46] Mr. Koller testified that Deloitte considered the application of the income approach was appropriate in the valuation of the subject assets. The discounted cash flow methodology under this approach calculated the present value of the future cash flow of the assets over their estimated life. In its reports Deloitte considered a 50-year period to generate the cash flow from the reserves.

[47] Mr. Koller also testified that the financial model did not consider any potential costs related to environmental obligations nor the general and administrative costs required to realize value from the assets. If these were considered, they would have the effect of reducing the cash flow and reducing the value of the assets.

[48] Deloitte considered comparisons of other valuation methodologies to ascertain whether the value estimates it derived using the income approach were reasonable:

a. Market approach – compared financial performance of other like oil and gas businesses;
b. Guideline precedent transactions – compared sales of similar assets within each Zone; and
c. Netback analysis – compared the subject to a "rule of thumb" calculation based on assets equaling 50% of the annualized net back.

[49] It was Deloitte's opinion that the value estimate was reasonable and corroborated when compared to the other valuation approaches.

[50] In arriving at its value estimates, Mr. Koller confirmed that Deloitte calculated a global market value for the Zones and then deducted the assessed value of the linear property from that value. The linear property assessment information was provided by CNRL and in questioning, Mr. Koller testified that a major assumption in the report was that the linear property assessment was representative of market value. If the linear assessment assumption did not represent market value, then there was a likelihood that the market value calculations would be incorrect. Mr. Koller in rebuttal noted that he was not engaged to consider the fair market value of the linear property.

[51] As a result of deducting the linear assessed value there was no residual value attributed to Zones A and B on July 1, 2017 (Zone C has no property under complaint in 2017).

[52] As a result of deducting the linear assessed value there was no residual value attributed to Zones A and B, and nominal residual value for Zone C on July 1, 2018.

[53] The value to be apportioned between oil and gas reserves and designated industrial property for Zone C for 2018 had no allocation of the amount to the reserves or the designated industrial property.

[54] Mr. Koller stated that the designated industrial property (assets under complaint) was not overly relevant in the valuation of oil and gas assets.

[55] In rebuttal testimony, Mr. Koller noted that Kingston Ross Pasnak LLP (Mr. Randy Popik) authored a critique of the Deloitte report. Mr. Koller stated that the critique specifically addressed the duration of the forecast, paucity of supporting information, the low level of assurance of a Calculation Valuation, the lack of contextual information, and an implied fair market value of linear property based on the assessed value. Mr. Koller noted that the critique did not dispute the valuation approaches and methodology, and that certain aspects of the report were professional judgement by Deloitte. Mr. Koller also testified that the overall methodology and approach used by Deloitte would not have changed if an Estimate Valuation or Comprehensive Valuation were prepared. Mr. Koller further testified that the discounted cash flow methodology would have been used and that the three (3) methods used to corroborate that valuation would also have been considered. He agreed that the difference between a Calculation Valuation and Comprehensive Valuation would be the level of review and a Comprehensive Valuation would include an in-depth analysis of assumptions used by management, reviewed, and assessed reporting documentation, and research to analyze industry benchmarks.

Kent McPherson Evidence and Rebuttal (Kent McPherson Report and Rebuttal) – Allan Beatty

[56] Mr. D. Allan Beatty, AACI, P.App, CRP is an Accredited Appraiser and Certified Reserve Planner. The Parties agreed that he was an expert witness as a qualified appraiser relating to market value and regulated assessment regimes, and specifically depreciation in valuation, the use of the cost approach in valuation, and quantifying losses in value under the cost approach.

[57] The Kent Macpherson Reports Mr. Beatty spoke to were Exhibits C7, C32 and C32.1.

[58] Mr. Beatty testified the engagement was to review the assessments of CNRL properties under complaint, with particular emphasis on the calculation of depreciation and to provide an expert opinion on the appropriate methods and amounts for depreciation to be applied for the years under complaint.

[59] At the outset, Mr. Beatty advised that the engagement was to consider the assessment of buildings and structures as well as M&E. In that there has been a joint recommendation made on buildings and structures by the Parties, Mr. Beatty focused his testimony on the M&E assessments.

Asset Review

[60] Mr. Beatty's report is subject to the assumption that the assets reviewed were representative of the properties under complaint. He testified that CNRL established the grouping of assets into three (3) Zones (A, B and C as per the CNRL Report), and he was not involved in that process. Mr. Beatty testified that at the outset CNRL provided a list of facilities, based on properties in different zones and a diverse range of assets. The assets were located from close to the USA border in the south, to Lac la Biche in the northwest region of Alberta. Mr. Beatty testified that the original list included 31 locations. He reviewed 26 of those locations; however, substituted facilities for the other 5 locations due to logistics and time management

issues. Mr. Beatty conceded that his review of the assessment of the subject assets, specifically the M&E, was based on information provided by CNRL. He confirmed that much of the data related to the original development costs of the assets, and that the calculations represented reproduction costs new. He also confirmed that the reported costs were based on the 2005 Alberta Construction Cost Reporting Guide (CCRG). In addition, Mr. Beatty summarized that there was no issue with the assessable costs being reported.

[61] Ultimately, Mr. Beatty viewed 32 facilities, which often included more than one asset per location. The facilities included well sites, compressor stations, water/gas injection wells, saltwater disposal wells and plants of different sizes. Mr. Beatty also confirmed that in his opinion, he had seen at least one of each type of asset. CNRL provided excel spreadsheets detailing the assets to Mr. Beatty. In addition, he was provided production records by CNRL for gas plants and compressors. Lastly, Mr. Beatty testified that he reviewed several "field sheets" representing other CNRL property that he did not personally inspect, but it would not be different than what he inspected. The "field sheets' were from both properties under complaint and not under complaint. In Mr. Beatty's opinion, he saw a representative sample of the assets under assessment. A list of the 32 properties Mr. Beatty physically viewed was included as Exhibit C32.1.

[62] Mr. Beatty responded to Dr. Edward Thompson's Report (Exhibit R13) regarding the reliability of Mr. Beatty's model, which in Dr. Thompson's opinion, was based on an inferior sample size. Mr. Beatty responded that the purpose of using three (3) gas plants illustrated the broad based functional and economic circumstances affecting the wide group of assets under complaint. The three (3) plant designs addressed the characteristics of the zones they were within. Mr. Beatty stated that the sample size coincided with his judgement as an appraiser, and he considered the facilities that he inspected to be representative of the entire group of assets under complaint. Further, Mr. Beatty confirmed that his methodology was based on valuation principles, and not statistical modelling techniques.

[63] Mr. Beatty testified that while others considered the number of facilities low based on a numerical review, the properties he reviewed represented over 90% of the assessed values of the assets under complaint in each year. Mr. Beatty noted that for the 2018TY there were 12 plants, 27 compressors and 3,386 wells under complaint and in the 2019TY there were 67 plants, 200 compressors and 2,773 wells under complaint, prior to the amendments made by the Applicant to remove assets from the complaint.

Valuation Parameters

[64] Mr. Beatty testified that he chose a broad approach to value the assets, rather than a consideration of individual assets. It was his opinion that this methodology was the best practice, and he likened the assets to a "funnel". At the top of the funnel are the "field" assets including well sites, booster stations, injection wells and compressor stations that feed a larger plant. The second level of assets is comprised of compressor stations that are directly tied to a "sales" pipeline, where the produced gas goes either to a processing plant, or directly to a customer. The bottom of the funnel is the gas plant level where some further processing may be required, or it may go directly for sale from the gas plant. It was Mr. Beatty's opinion that the gas plant was the focal point of the linked assets. His proposed model followed that rationale.

[65] Mr. Beatty determined that a methodology to determine any additional depreciation, under Schedule D, should be based on the production level of gas plants. That determination was based on a review of four (4) gas plants (Seiu Lake, Marten Hills, Dunvegan, Greencourt) which were physically

inspected. From the four (4) plants, three (3) plants were chosen by Mr. Beatty as being representative of the CNRL gas plants under complaint. The three (3) plants were in separate zones. Mr. Beatty testified that they were not selected to be representative of a gas plant in a particular zone; rather, the plants were representative of the reduced production capacity across the three (3) zones and each plant had separate challenges. Of the three (3) plants, only Marten Hills was under complaint for the 2018TY. All three (3) plants were under complaint for the 2019TY. It was Mr. Beatty's testimony that a total of 12 gas plants were under complaint in the 2018TY and 67 plants were under complaint in the 2019TY, prior to the amendments made by the Applicant to remove assets from the complaint.

[66] In rebuttal questioning, Mr. Beatty confirmed that the reports from the designated assessors - Klem, Clark and Fortin Reports (Exhibits R12, R14 and R18) - identified errors in the Kent Macpherson Reports (Exhibit C7 and 32.1). Mr. Beatty did not conduct any further validation of the amounts in the designated assessors' reports; however, accepted the proposed changes from the Klem, Clark and Fortin reports. Mr. Beatty stated that the amendments would not alter his conclusions.

[67] Mr. Beatty confirmed that M&E assessments in Alberta are based on a regulated approach, not a market value approach. He testified that the Sheila Young Report (Exhibit R19) concept was that the goal of the regulated assessment was to achieve a predictable assessment, not subject to market trends or the impact of commodity prices. Ms. Young stated that this was evidenced by excluding certain costs from the CCRG, in conjunction with a shortened depreciation time frame, and no education tax on M&E. Mr. Beatty rebutted that there was no correlation between economic obsolescence and any of these "policies". He opined that there is no support for the concept that the policies account for economic obsolescence and the Minister's Guidelines do not bar additional depreciation for M&E.

[68] In questioning, Mr. Beatty acknowledged that the Minister's Guidelines provide for idled or "blinded" or mothballed equipment to be removed from the assessment roll, subject to meeting certain requirements.

[69] Mr. Beatty addressed the Provincial Assessor Directive *PADIR 2018-004* dated November 20, 2018 and an e-mail issued on December 11, 2018 to clarify the intent of the Directive. The Directive considers Schedule D depreciation; however, directs that economic conditions are not to be taken into consideration. The e-mail memo provides that functional and external obsolescence are considerations. Mr. Beatty considers the Directive and clarification troublesome for two (2) reasons. First, the Directive was issued after the 2018TY complaint was filed. Second, the advice contradicts itself in that it allows functional and external obsolescence while restricting economic conditions.

[70] Mr. Beatty confirmed that he was cognizant that a cost-based assessment is not a market value appraisal. However, he also compared the valuation process to a "three-legged stool", where the legs of the stool represented cost, utility, and value. When utility is diminished Mr. Beatty testified the only way to get to the value was through additional depreciation.

[71] Mr. Beatty opined that the since the costs of the facilities are related to original costs, they represent the reproduction cost of the asset. Based on this, Mr. Beatty considered it appropriate to refer to capacity as the designed capacity of the asset in considering potential additional depreciation.

[72] In rebuttal to the Zeiner Report (Exhibit R15) which suggested that reproduction cost might include costs for M&E or linear assets, Mr. Beatty's response was that if that was the case it was the result of the assessor not correctly categorizing the assets.

[73] Mr. Beatty also analyzed methods under which asset values are considered. He opined that the starting point for cost-based analysis is generally the Reproduction Cost New of the assets, although there has been an evolution to Replacement Cost New. The definitions for each were contained in the Kent McPherson Report (Exhibit C7) as follows:

a. "Reproduction Cost New is defined as an estimate of the amount required to reproduce an asset at one time in like kind and materials in accordance with current market prices for materials, labour, and manufactured equipment, contractor's overhead and profit, and fees, but without provision for overtime, bonuses for labour, or premiums for materials or equipment."
b. "Replacement Cost New is defined as the estimated amount required to replace an asset at one time with a modern new one. The asset would be replaced using the most current technology and materials that will duplicate the production capacity and utility of the existing asset at current market prices for materials, labour, and manufactured equipment, contractors' overhead and profit, and fees, but without provision for overtime, bonuses for labour, or premiums for materials or equipment."

[74] Mr. Beatty was critical of the regulated regime for assessing M&E. He did not have issue with the Schedule A calculation. Mr. Beatty did take issue that so many of the assets under appeal (98% according to his calculations) had reached their maximum allowable Schedule C amount. By increasing the "Base Year Modifier" in Schedule B, year over year assets the assessed value of these assets was increasing, while at the same time production levels of those assets was declining. His opinion was that it created an untenable situation where assets are aging and should be decreasing in value but instead were increasing. In his estimation, the only option to correct this would be to apply Schedule D additional depreciation.

[75] Mr. Beatty testified he was aware that Schedule C depreciation was loosely based on the "Iowa Curve" methodology which he testified considered the age of the asset and a value which eventually reduced to a mortality rate of zero. In questioning, Mr. Beatty confirmed that the regulated concept applied in Alberta to M&E was to allow an immediate 25% deduction (75% residual value), generally for the first few years until the regulated calculation was greater than the initial 25%. He also acknowledged that the Alberta regulated concept was capped at a maximum of 60% (40% residual value) so that no further depreciation was provided for in Schedule C. It was his opinion that the Iowa Curve was not adopted by the CCRG, rather it was adapted for Schedule C.

[76] Mr. Beatty acknowledged that Schedule C of the Minister's Guideline with respect to M&E is an appropriate consideration of normal physical and functional depreciation. Those standards in Schedule C are not disputed.

[77] Mr. Beatty stated that it was his decision to focus on the gas plant level and then based his recommendation for additional Schedule D depreciation on the production levels of the gas plants as a ratio of the design production capacity of the gas plant. Mr. Beatty noted that the wording of Schedule D directs

the assessor to provide for additional depreciation in the case where a loss in value exists that is not provided for in Schedule C. The proviso was that there is "acceptable evidence of such loss in value".

[78] Mr. Beatty compared actual production levels for the three (3) plants to the facility design capacity. The data was provided by CNRL and was from AccuMap. It is reported to be publicly available, although Mr. Beatty was unsure whether a subscription was required to obtain the information. Mr. Beatty's opinion based on the data that he reviewed was that there were no gas plants operating at greater than 40% of design capacity. In questioning, Mr. Beatty confirmed that he did not review individual assets to determine their performance levels and conceded that there may be some assets operating at higher capacity levels and some assets operating at lower capacity levels. It was Mr. Beatty's opinion that the subject assets, at the plant level, are not performing to the capacity for which they were designed and built. The limiting issues are described by Mr. Beatty as abnormal functional obsolescence, recognizing that the challenges are internal to the property.

[79] The model being advocated by Mr. Beatty is based on actual production through-put compared to design capacity and reflects an appropriate method to quantify depreciation according to the market value standard for buildings and structures and Schedule D depreciation for M&E. Mr. Beatty also testified that the application of the model against all sites was considered as site specific in that all plants are represented by the proposed model.

[80] During his testimony, Mr. Beatty testified that at some point after the writing of his first report (Exhibit C7), but before he submitted his rebuttal report (Exhibit C32) he received information from CNRL relating to the production records of 76 gas plants. He testified that the bulk of the gas plants were operating at less than 40% of their design capacity. Mr. Beatty confirmed that he had not provided copies of the gas plant throughput versus design capacity to the Respondent, and it was not included in either of his reports.

Depreciation

[81] Mr. Beatty noted that Schedule D provided for the following:

a. "For any depreciation that is not reflected in Schedule C, the assessor may adjust for additional depreciation provided acceptable evidence of such loss in value exists."

[82] Mr. Beatty discussed the concept of depreciation and he defined depreciation in his report (Exhibit C7) as:

a. "Depreciation, defined simply, is the loss in value, relative to cost, from any cause. The widely recognized approach to estimating depreciation includes separate consideration of the physical wear and tear of an aging improvement from losses due to functional issues, which are both distinct from external obsolescence. The only constant within this framework is physical depreciation, since both functional and external obsolescence apply to some, but not all buildings or other assets."

[83] Mr. Beatty stated that the first level of depreciation is physical which may be curable or incurable. Curable depreciation comprises items that can be replaced or renewed and is generally captured in the age-life formulas. Incurable depreciation relates either to short-lived or long-lived items. Short-lived items are

components unlikely to be cured during the life of the asset and require periodic repair or replacement for the asset to achieve its full life expectancy. Long lived items are those assets expected to last the full life of the asset.

[84] Mr. Beatty addressed functional obsolescence as defined in the publication "Valuing Machinery and Equipment: the Fundamentals of Appraising Machinery and Technical Assets, published by the American Society of Appraisers, Second Edition ebook" as follows:

> a. "**Functional Obsolescence** is a form of depreciation in which the loss in value or usefulness of a property is caused by inefficiencies or inadequacies inherent in the property itself, when compared to a more cost efficient or less costly replacement property that new technology and changes in design, materials, or process that result in inadequacy, overcapacity, excess construction, lack of functional utility, or excess operating costs in the property. Symptoms suggesting the presence of functional obsolescence are excess operating costs, excess capital cost, over-capacity, inadequacy, and lack of utility."

[85] In terms of the types of functional obsolescence Mr. Beatty stated it also came in the forms of curable and incurable – defined as follows:

> a. Functional obsolescence – curable involves replacing assets that makes economic sense;
> b. Functional obsolescence – incurable is where the cost of replacement exceeds the economic gain.

[86] Mr. Beatty considered the concept of super-adequacies. He provided the definition from the Marshall and Swift Manual (from Exhibit C7) as:

> a. "Super-adequacies are those unwanted items which to (sic) not add value at least equal to their cost, notably special-or-singular purposes features for a particular user…"

[87] Mr. Beatty opined that functional depreciation due to super-adequacy was evident for the assets under complaint. He argued that the excess capacity found throughout the inventory of assets would also create excess operating costs due to existing and sustained shortfalls in production from the assets and the costs to operate plants designed for more capacity than justified by current conditions.

[88] Mr. Beatty determined that to account for super-adequacies, the starting point was to use a replacement cost method, where the cost of the super-adequacy is backed out prior to consideration of other forms of depreciation. This avoids double-counting for other depreciation such as age-life physical depreciation.

[89] One example of super-adequacy was within the Marten Hills gas plant. Mr. Beatty testified that there were 13 compressors, of which eight (8) were "blinded" or mothballed and were assessed at a zero rate. A further three (3) compressors could run but were not being used ("hot spares") and two (2) were operating. There were a further three (3) compressors in another building, of which one (1) was operating. Therefore, of the total 16 compressors on site, only three (3) were operating and a further five (5) remain on the assessment roll, despite not being used.

[90] Mr. Beatty responded to the Dr. Edward Thompson Report (Exhibit R13), where Dr. Thompson noted that the licensed capacity for Marten Hills had reduced from over 4,000 DEC/day to 600 DEC/day (a "DEC" of natural gas means 1000 standard m³/day of natural gas). As a result, Dr. Thompson's position was that the production ratio should be adjusted to the denominator being 600 DEC/day and not more than 4,000 DEC/day. Mr. Beatty acknowledged the license amendment; however, also noted that the plant itself had not changed substantially, albeit there was a "blinding" of 21 of a total of 121 assets.

[91] An additional form of depreciation considered by Mr. Beatty was external to the asset, either due to the property's location or to economic obsolescence. Mr. Beatty noted that the publication "Valuing Machinery and Equipment: the Fundamentals of Appraising Machinery and Technical Assets, published by the American Society of Appraisers, Second Edition ebook" defined external obsolescence as follows;

> a. "**External obsolescence** is a loss in value of a property caused by factors external to the property. These may include such things as the economics of the industry; availability of financing; loss of material and/or labor sources; passage of new legislation; changes in ordinances; increased cost of raw materials, labor, or utilities (without an offsetting increase in product price); reduced demand for the product; increased competition; inflation or high interest rates; or similar factors

[92] An example of economic obsolescence due to location was described as property near a noxious, or potentially hazardous use of a nearby property. Economic obsolescence can come from several sources with the following key elements (Exhibit C7);

a. The influence is external to the property;
b. The influence has more than a short-term impact;
c. The remedy is outside of the control of the property owner; and,
d. The influence has a measurable effect on value.

[93] Mr. Beatty provided a list of seven (7) factors he considered to be general economic conditions that negatively affect the production and sale of gas in Alberta. While these are reported in his rebuttal report (Exhibit C32) they are also quantified in the CNRL Reports (Exhibits C3.1, C31 and C47).

[94] Mr. Beatty also testified in rebuttal that the assessor has failed to consider the impact of mergers and acquisitions in the valuation of assets. Mr. Beatty noted that the CNRL Report (Exhibit C3.1) identified eight (8) transactions where the assessed value of the assets was not representative of the purchase price. Accordingly, Mr. Beatty testified that this demonstrated a significant level of economic obsolescence, not currently recognized in the current assessed value.

[95] For functional and external obsolescence Mr. Beatty determined that there is a two-step process to properly apply depreciation. First, there is a need to identify that obsolescence exists and second, if it exists, there is a need to design the proper method to measure the depreciation.

[96] In the case of the subject complaints, Mr. Beatty finds that functional obsolescence is evident due to super-adequacy. He opines that in addition to excess capital costs, the super-adequacy inherently creates excess operating costs. However, the focus of his analysis relates to the excess capital costs only.

[97] Mr. Beatty also determined that the assets are directly impacted by economic obsolescence due to economic challenges identified in the CNRL Report (Exhibit C3.1).

[98] As a result, Mr. Beatty finds that there is functional obsolescence because of super-adequacy and economic obsolescence because of challenges faced by the gas industry. Mr. Beatty testified that there can be an overlap between functional and economic obsolescence. Mr. Beatty confirmed that he had not determined a value for each form of obsolescence; rather, he considers that additional depreciation under Schedule D is warranted without apportioning the amount between functional and economic loss.

[99] Having identified that obsolescence exists, the second step identified by Mr. Beatty is to design the proper methodology to measure the depreciation.

[100] Mr. Beatty further quantified obsolescence by placing the gas plants into three (3) bands/tiers of production. His theory was that if existing assets were designed to current levels of production, their configuration would be significantly different from what exists. The facilities would not be sized the same way and there would not be the same level of equipment. As production levels are expected to remain low or decrease further, and certain facilities are abandoned, he determined the appropriate application of additional depreciation provided for in Schedule D could be as follows:

Level	Production - as % of Design Capacity	Obsolescence - Buildings & Structures		Obsolescence - M&E
1	Less than 50% more than 25%	50%		50%
2	Less than 25% more than 10%	65%		65%
3	Less than 10%	80%		80%

[101] To apply the obsolescence from the model, the cost base and base year modifier (Schedule A x Schedule B) is multiplied by the Schedule C regulated age/life amount. In turn the Schedule D revision based on the production to designed capacity ratio, would be applied (50% obsolescence - 50% residual; 65% obsolescence - 35% residual; and 80% obsolescence - 20% residual). The figure is then multiplied by the statutory amount of 77%. In the proposed model, plants operating at a greater than 50% of design capacity would not receive additional Schedule D depreciation.

[102] Mr. Beatty's initial position was that the proposed model could be applied across the asset inventory and would be reliable, easily applied and could be varied to suit changing circumstances in future years. However, Mr. Beatty testified that upon reflection, the model might not be as easily applied as first thought. Therefore, he considered a further simplified calculation, applying a universal figure for the functional and economic obsolescence. Mr. Beatty's analysis concluded a 60% (40% residual) obsolescence factor could be applied, based primarily on economic factors. The obsolescence would be applied as a single factor, and other calculations would be adjusted accordingly.

[103] Mr. Beatty summarized that his methodology is based on the replacement asset theory; however, he opined that his approach is technically an application of incurable functional obsolescence, and the model also considers economic obsolescence. Mr. Beatty considers that the model is advantaged in that it does not have a specific quantification between functional and economic obsolescence. The model relies

on production ratios as a practical means of recognizing both forms of obsolescence through the replacement asset model. A reduction of 60% for additional Schedule D depreciation should be provided.

[104] Mr. Beatty also addressed the Sheila Young Report's (Exhibit R19) concept that throughput measured against design capacity is not a valid measure of Schedule D. Ms. Young stated that the depreciation curve is based on numerous properties and is typical of the group studied. Mr. Beatty's position is that this form of measurement suggests a market functioning at a typical level. His opinion is that the assets are operating well below typical levels and should receive additional Schedule D depreciation.

[105] In questioning, Mr. Beatty was asked whether a gas price increase or decrease would affect the model he proposed. His response was that further gas price reductions would result in less production, so the model would account for this based on production and a Schedule D deduction. If the gas price were to increase, it was Mr. Beatty's opinion that production capacity is already constrained by a bottleneck and pipeline capacity. He conceded that the economics may change and that all aspects would need to be reviewed to determine whether an amendment to the Schedule D depreciation was warranted.

[106] In the Zeiner Report (Exhibit R15), Mr. Beatty noted that Mr. Zeiner, was critical that the modelling approach was over simplistic and that depreciation for a plant may not be the same as the other assets in the "funnel". Mr. Beatty testified that his approach involved a detailed review of production levels. The three (3) plants and associated assets represent over 90% of the assessed value under appeal. While additional stratification could be added, Mr. Beatty was unable to conclude that it would create a significantly better result.

Production Flow Decay

[107] In the Kent McPherson Rebuttal Report (Exhibit C32), Mr. Beatty addressed the Dr. Edward Thompson Report (Exhibit R13) concerning the Production Flow Rate (PFR) – both in general terms and specifically the Marten Hills gas plant. Dr. Thompson's opinion was that the typical decay of production flow rates he calculated for three gas plants (Seiu Lake, Marten Hills and Dunvegan) showed natural decay as expected for 40+ year old plants. Mr. Beatty concurred with Mr. Pole's position outlined in the CNRL Rebuttal Report (Exhibit C34), that Dr. Thompson had calculated the data based on a "closed reservoir" and did not consider the full plant life. Mr. Beatty also concurred with Mr. Pole that a closed reservoir analysis would be applied typically to wells as opposed to a gas plant. Wells would naturally decline, whereas gas plants when built would anticipate replenishment through the drilling of additional wells.

[108] Mr. Beatty also questioned why Dr. Thompson had relied upon an analysis of the Gold Creek gas plant to demonstrate that the gas plants reviewed by Mr. Beatty were not representative of the entirety of the assets under complaint. Mr. Beatty acknowledged the Gold Creek gas plant had been removed by CNRL from complaint. Mr. Beatty observed that Gold Creek was producing at a rate of less than 40% in terms of CNRL gas production; however, he confirmed the plant had "take or pay" contracts with other gas producers which allowed the gas plant to process additional gas and as a result the production level of the plant was more than 50%. Dr. Thompson had calculated the 2018 production rate at 77%, and it would be 81% after accounting for a maintenance shut down. In 2017 the production rate was 62%. Mr. Beatty suggested this example was an anomaly by virtue of the additional contractual arrangements and questioned why Dr. Thompson had selected this plant for the purpose of comparison.

Ducharme, McMillen & Associates Canada, Ltd. Report and Rebuttal (DMA Report and Rebuttal) - Matthew Pierson

[109] Mr. Matthew Pierson, AIMA-Associate, B.A. is a member of the Institute of Municipal Assessors. The Parties agreed that he is a tax agent and is an expert witness on industrial property assessment in the province of Alberta.

[110] The DMA Reports Mr. Pierson spoke to were Exhibits C4 and C33. The reports were co-authored by Mr. Jon d'Easum.

[111] Mr. Pierson testified that the basis for the CNRL complaint was seeking additional obsolescence allowances due to external factors beyond CNRL's control. His reports spoke to how assessments were completed and the recommended methods for valuing in Alberta. The engagement included the methodology of assessment of the building and structures and M&E.

[112] Mr. Pierson testified he was aware that the Parties had entered a joint recommendation concerning buildings and structures; therefore, his comments would primarily focus on additional Schedule D depreciation for M&E.

Valuation Standards

[113] Mr. Pierson testified he was familiar with the valuation standards for buildings and structures and M&E. For buildings and structures the standard is market value and for M&E the standard is the regulated calculation in the Minister's Guidelines. However, Mr. Pierson also testified that depreciation itself is a market concept such that his review could not divorce the market value concept from the Schedule D calculation.

Schedule D, Provincial Assessor Directive and Provincial Assessor Comments

[114] Mr. Pierson identified that there was no definition of depreciation in the MGA, the Regulations, or the Minister's Guidelines for M&E. Mr. Pierson testified that the concept of Schedule D depreciation has been in place for many years and was included in the 1967, 1979 and 1984 Assessment Manuals. He also testified that the Minister's Guidelines for other regulated assessments of property such as Linear, Farmland and Railways include specific guidelines and restrictions for Schedule D. The Minister did not establish similar restrictions for M&E Schedule D applications; rather, the wording has remained unchanged. Mr. Pierson advocated that the M&E Schedule D provisions "are not restrictive in any manner and should be read in conjunction with the provisions of Section 293 of the MGA which instructs assessors to prepare fair and equitable assessments". Further, that the legislation and guidelines for M&E "do not divorce themselves from the concept of assessing based on the relative value of one property to another".

[115] Mr. Pierson reviewed the contents of a Directive from the Provincial Assessor dated November 20, 2018 and an e-mail clarification dated December 11, 2018, regarding the application of Schedule D to the assessment of M&E. The Directive stated (Exhibit C4, pages 207-208):

> Additional depreciation may be applied under Schedule D to account for functional obsolescence, external obsolescence or locational obsolescence but must not be applied

> for economic conditions. The main reason for additional depreciation is significant reduction in the output of the facility or portion of the facility due to circumstances within the facility itself.

[116] Mr. Pierson testified that there were at least two (2) problems with the Directive. The first is that it was issued after CNRL had already filed its complaint of the 2018TY assessment based on economic obsolescence. Secondly, the Directive was not in keeping with what was already occurring in another industry (pulp and paper) where Schedule D depreciation was granted. After issuing the Directive, the Provincial Assessor provided a clarification e-mail; however, Mr. Pierson testified that it did not completely explain the matter. The e-mail stated that the Directive did not constitute a "policy change", rather it was to clarify that general economic conditions were not to be considered in applying Schedule D. It also confirmed that Schedule D provides for the depreciation to fall below the floor level of 40% as regulated in Schedule C. The clarification also stated that the Provincial Assessor did not intend to remove any Schedule D allowance that was already in place.

[117] Given that the Directive was issued after the 2018TY assessment, it was not possible for the Applicant to have known the Provincial Assessor's intention. The most recent prior directive regarding Schedule D was issued in February 2009. It distinguished the differences between linear electric power generation Schedule D and M&E Schedule D.

[118] Mr. Pierson opined that the Directive was an interpretation by the Provincial Assessor and was further clarified not to be a policy change. He also testified that a Directive is not binding; rather, it is direction to assessors. It was also his position that the Provincial Assessor was endeavoring to correct what was perceived as inconsistencies in the application of Schedule D. In doing so, Mr. Pierson opined that the Provincial Assessor appeared to be attempting to eliminate all Schedule D allowances perceived to be of a general economic nature.

[119] Mr. Pierson relied heavily on the terminology of Schedule D that "...any depreciation…" may be applied.

[120] Mr. Pierson noted that the Sheila Young Report (Exhibit R19) suggested that considerations such as the CCRG excluded costs, truncated depreciation curve in Schedule C, the 77% statutory level and the lack of education taxes on M&E, allowed for a "smoothing out" of global economic circumstances. Mr. Pierson took the position that CCRG costs do not mitigate general economic conditions, and the truncated depreciation curve was meant as an incentive for new investment in M&E. The statutory level was also an inducement to support investment activity. In summary, he contended that these considerations did not mitigate general economic conditions and have no bearing on the calculation of depreciation.

Depreciation

[121] It was Mr. Pierson's opinion that much of the information in the current assessment regime has been carried forward from historical legislation, regulations, and guidelines. For instance, the remaining life tables in the Minister's Guidelines were adopted from the 1984 Assessment Manual.

[122] Definitions of depreciation and abnormal depreciation referenced by Mr. Pierson included the Alberta 1984 Assessment Manual (Exhibit C4, page 15 and C4, pages 123 to 129), the Alberta 2001 Metal

Buildings Cost Manual (Exhibit C4, page 9), the Alberta Assessors' Association Valuation Guide for Special Purpose Properties (Exhibit C4, page 10), as well as the International Association of Assessing Officers "Glossary for Property Appraisal and Assessment" (Exhibit C4, page 16 and C4, pages 131 to 134). In questioning, Mr. Pierson confirmed his opinion that these definitions could inform the Board in applying concepts for additional depreciation in Schedule D, as most referred to a "loss in value" as a general principle of depreciation.

[123] Mr. Pierson indicated that evidence of depreciation can relate to a decline in market, equipment sales, industry property transactions, income analysis and general economic conditions in a particular industry. He argued that "any form of depreciation that causes the value of an improvement (such as machinery & equipment) to decrease beyond what is determined through the application of the normal tables ("Schedule C") should be reviewed and recognized, if applicable".

Methodology

[124] Mr. Pierson confirmed that the calculations of the properties under complaint, arrived at by using the Minister's Guidelines for Schedules A, B and C and the statutory reduction, were not in dispute. Mr. Pierson testified that Schedule C included normal physical and normal functional depreciation. It was the opinion of Mr. Pierson that additional Schedule D depreciation as the result of economic obsolescence was appropriate. This was based on Mr. Pierson's position that the additional depreciation would be consistent with the assessment of other industrial facilities in Alberta.

[125] Mr. Pierson did not review the properties under complaint, as the engagement of DMA precluded the quantification of the proposed Schedule D allowance. Mr. Pierson also testified that the duty of the assessor was to ensure the valuation was fair and equitable to similar assets in the same business. The assessor also has an obligation to prepare the assessment correctly.

[126] Mr. Pierson acknowledged the responsibility of the Applicant to provide acceptable evidence of a loss in value. If the Parties are unable to agree on what constitutes acceptable evidence, it is the responsibility of the Board to make the determination. He opined that the information to support a Schedule D request could include "building and structure appraisals, enterprise valuations, engineering studies, newspaper and trade publication information, new Government Regulations, meeting with facility personal (sic) to discuss problems with the facility; and a review of sales of other facilities to determine potential losses in value."

[127] Mr. Pierson also testified that Schedule D depreciation allowances should be reviewed annually to ensure the allowance remains relevant.

[128] It was Mr. Pierson's position that the assessments had not been prepared correctly, as the assessor had not applied a Schedule D allowance, notwithstanding a "dramatic and sustained loss in value that requires a "Schedule D" adjustment".

Economic Obsolescence

[129] Mr. Pierson relied on the evidence of CNRL Reports which identified a loss in value due to depressed natural gas prices. It was Mr. Pierson's opinion that the common characteristic of the properties

under complaint was a loss in value because of suppressed gas prices. It was also his opinion that the loss in value is not reflected in the property assessments and the manner to correct the loss in value is additional depreciation as provided for in Schedule D.

[130] In support of the economic difficulties in the gas industry, and further to the matters raised in the CNRL Reports, Mr. Pierson noted that the Alberta Government had implemented the "Shallow Gas Tax Relief" for the 2019TY. This program reduced the property taxes on shallow gas wells and pipelines by 35% for the 2019TY. The program acknowledged that the assessments had already been issued for 2019TY and so as not to disturb the assessment process the relief was in the form of a tax reduction. The cited purpose of the program (Exhibit C4) was:

> This short term relief will help shallow gas producers cut costs, protect jobs and remain competitive in the face of economic pressures affecting the natural gas industry, while the province updates the assessment model.

[131] Mr. Pierson testified that program was subsequently extended, and some modification made. Relief for the 2020TY and subsequent years was in the form of a corresponding reduction in the assessment as opposed to being delivered as tax relief. The reference to a model review was also deferred for three (3) years. Mr. Pierson testified that this program was evidence that there were issues within the natural gas industry. He also noted that there was nothing within the program to deal with surface equipment (M&E).

[132] Mr. Pierson testified that there is precedent in providing Schedule D for economic obsolescence. He cited that the forestry/pulp and paper industry saw economic factors affecting the industry for many years. As a result, Schedule D additional depreciation was applied to lumber mills across Alberta, and the allowance remained in place until 2013. The same additional depreciation also occurred in the thermal coal industry.

[133] Mr. Pierson noted that an Alberta Municipal Government Board decision ***Shell Canada Limited and County of Strathcona No. 20, Board Order 54/92*** and an Alberta Court of Appeal decision ***Strathcona No. 20 (County) v. Alberta (Assessment Appeal Board) and Shell Canada Limited, [1995] A.J. No. 369 Appeal No. 9403-0085-AC*** (collectively Shell Canada) allowed a 25% Schedule D allowance for a locational issue with the plant that impacted its economic viability.

[134] A second decision referred to by Mr. Pierson was an Alberta Municipal Government Board decision ***Daishowa-Marubeni International Ltd. and The Municipal District of Northern Lights No. 22, Board Order 109/09*** (Daishowa). Mr. Pierson testified that in that decision the Board ordered a 20% allowance, which was a 10% increase over what the assessor initially applied. The allowance was the result of abnormal economic obsolescence due to adverse economic conditions. That decision also noted three (3) Pulp Mills and ten (10) Forestry-Sector Facilities were already receiving a Schedule D allowance of between 10% and 50%. Mr. Pierson testified that the Forestry Sector facilities no longer receive the Schedule D allowance but that the Pulp and Paper facilities continue to receive on-going Schedule D allowances. In questioning, Mr. Pierson confirmed that he had not provided any evidence to support these comments (other than what was contained in the Daishowa decision); however, he also noted that specific information was not likely public knowledge and that the Provincial Assessor and any delegated assessors would have access to the information on facilities where Schedule D allowances were provided.

[135] Mr. Pierson was also questioned in rebuttal as to whether he had considered the following MGB Decisions when he was preparing its report and rebuttal report:

a. ***Amoco Canada Petroleum Company Ltd. and Municipal District of Greenview No. 16, MGB 113/99*** (Amoco/Greenview)***;***
b. ***Amoco Canada Petroleum Company Ltd. and Municipal District of Bonnyville No, 87 – MGB 192/99*** (Amoco/Bonnyville)***;***
c. ***BP Energy Canada and Municipal District of Greenview No. 16, MGB 052/05*** (BP/Greenview)***; and***
d. ***BP Energy Canada and Woodlands County, MGB 086/05*** (BP/Woodlands)**.**

Mr. Pierson testified that he did not consider the foregoing decisions as in his opinion the issues in those appeals were not economic obsolescence. The Daishowa decision was the most recent MGB, or Court decision and he based his commentary on that decision.

[136] Mr. Pierson also provided three (3) examples of building and structures where the assessment was reduced because of the "blinding" of M&E. In those cases, he confirmed the assessment of the buildings and structures was reduced to zero, as the M&E was not operating.

Conclusion

[137] Mr. Pierson concluded that a Schedule D allowance should be made based on "a loss in value applicable to adverse economic circumstances in an industry forms a valid basis for an additional depreciation allowance". Industrial facilities in Alberta are granted additional depreciation arising from factors beyond the control of the property owner. In this instance, the properties are affected by economic influences, a factor that should warrant additional depreciation. Mr. Pierson's opinion is that Schedule D provides for "any additional depreciation" and this was clearly the intent of the legislators.

[138] He supported the CNRL request for a 50% Schedule D allowance for M&E.

SUMMARY OF APPLICANT'S POSITION

Introduction

[139] The Applicant notes that the MGA was amended in 2019. The legislation relied upon by the Applicant is essentially identical, with some variations. The legislation relied on is as follows:

<u>2018TY</u>

- M&E
  - MGA Sections 292 and 293
  - The Matters Relating to Assessment and Taxation (MRAT), Alberta Regulation 220/2004 Section 9
  - 2005 Construction Cost Reporting Guide (CCRG)
  - 2017 Alberta Machinery and Equipment Assessment Minister's Guidelines

- Buildings and Structures
  - MGA Sections 292, 293 and 1(1)(n)
  - MRAT Section 5

2019TY

- M&E
  - MGA Sections 292 and 293
  - MRAT, Alberta Regulation 203/2017 Section 12
  - 2005 Construction Cost Reporting Guide (CCRG)
  - 2018 Alberta Machinery and Equipment Assessment Minister's Guidelines
- Buildings and Structures
  - MGA Section 292, 293 and (1)(n)
  - MRAT, Alberta Regulation 203/2017 Section 13
  - 2018 Alberta Machinery and Equipment Assessment Minister's Guidelines
  - Valuation Guide of Special Purpose Properties

[140] The Applicant seeks a reduction to the M&E assessments under complaint through a Schedule D application for additional depreciation based on economic obsolescence. Both Parties agreed that "depreciation" is not defined anywhere within the current legislation.

[141] In the 2018TY (2017AY) there are 493 roll numbers under complaint and in the 2019TY (2018AY) there are 1,129 roll numbers under complaint. The Applicant requested that the M&E assessments of most assets under complaint be reduced by 50% for both 2018TY and 2019TY. The properties were situated in 65 municipalities in 2018TY and 245 municipalities in 2019TY. The Applicant has allocated the M&E assets under complaint into three (3) distinct groups (zones).

[142] Over the past number of years, the price of natural gas has decreased. This price decrease, combined with many other external factors, has created challenges for the Applicant, particularly in the three (3) zones identified. As a result, the Applicant has filed complaints on the assessments of selected properties within the specific zones. The Applicant identified that not all properties in each zone are complained against; rather, the complaint was limited to those where the materiality of the proposed assessment would impact future viability of the assets.

[143] Once the Parties exchanged their disclosure, the Applicant advised that it had reached an agreement with the Respondent on a reduced assessment for certain buildings and structures. Generally, the joint recommendation is to reduce certain buildings and structures assessment by 50% where the buildings and structures are used to house certain M&E assets which are not-operational (blinded) and where the assessments on those M&E assets have been reduced to zero. A recommendation was made to the Board to accept the joint recommendation (Exhibit R46).

[144] During the hearing, the Applicant withdrew its complaints for M&E assets related to the Gold Creek and Progress gas plants and associated facilities.

Confidentiality

[145] The Applicant advised that much of the financial information provided to the Board is confidential in nature. The Respondent was amenable to a form of Confidentiality Agreement and a joint recommendation has been submitted to the Board for the form of a Confidentiality Agreement (Exhibit C43).

Economics

[146] The Applicant's position is that there has been a significant decline in the price of natural gas, both in the world-wide market and specifically in Alberta. The decline was precipitated by several factors, including the following:

a. Changes in technology beginning in 2010 for gas extraction increasing production and supply from USA producers (impact of hydraulic fracturing (fracking));
b. Alberta's product being landlocked with no additional pipeline capacity;
c. Massive decline in investment in the industry;
d. The decline is not a "blip" – it is a long term unsustainable collapse;
e. There have been several insolvencies due to the reduced capital availability; and
f. Price forecasting does not demonstrate a return to favorable pricing.

[147] The Applicant noted that natural gas prices were $11/gj in 2005 and in the past two years have reduced to the $2/gj level, and in some short-term circumstances have been negative, so that producers had to pay to have someone take their product. The Applicant maintains that the decline in gas prices represents a loss in value of its assets. It has been shown that the price reduction has been for a sustained, prolonged, and continuing situation, existing for the foreseeable future. The long-term futures pricing for natural gas does not show signs of recovery. However, this need not be a "permanent" loss.

[148] The Applicant also cited other reasons for economic hardship, including:

a. Uncertainty in the price of natural gas;
b. Lack of sustained investment in the Canadian market;
c. Burdensome legislative regulations;
d. Insolvency in many similar businesses;
e. Reduced merger and acquisitions, and deal value diminished;
f. Increasing orphan wells; and
g. Decline in production, notably in Zones A and B and some in Zone C. Natural replenishment is not occurring.

[149] As a result of the foregoing, there has been a virtual full stop in drilling activity in Zones A and B, and limited new wells in Zone C. Zone C has drilling activity; however, it is limited to horizontal drilling. The Applicant clearly indicated that there is not a shortage of gas; rather, the current economics do not allow for drilling on a profitable basis. Notionally, the Applicant testified that if natural gas prices were $4/gj future drilling may be profitable.

[150] Due to the reduced drilling activity, replenishment is not occurring in the gas plants associated with the properties under complaint. Therefore, production levels are declining, which, from a financial perspective, has caused Zones A and B to be break even or run at a loss and Zone C net back to be significantly reduced.

[151] The Applicant provided Court decisions that recognize that depressed prices in an industry can be a negative influence resulting in a loss in value for assessment purposes. Those decisions were ***Swan Valley Foods Ltd. v. Assessment Appeal Board [1978] BCJ No. 32 (SC)*** (Exhibit C1, Tab 27) and ***B.C. Forest Products Ltd. v. British Columbia (Assessor of Area #03 – Cowichan Valley), [1984] BCJ No. 599 (SC)*** (Exhibit C1, Tab 28).

[152] The Applicant provided an expert in business valuation (Mr. Rob Koller) to demonstrate the value of the facilities affected. It was Mr. Koller's opinion that assets in Zones A and B had no residual value and those in Zone C had some value; however, he was unable to reliably allocate the value between the reserves and the equipment. He testified that the M&E was of little value in business valuations of oil and gas properties.

[153] The Applicant also cited ***Pearce v. The City of Calgary, (1915), Vol IX W.W.R. 668 at 674 (SCC)*** (Pearce) (Exhibit C1, Tab 23) which dealt with property that could not be sold at any price. The decision determined that fair market value need not be an exact definition, rather the ""value" of a non-productive subject of taxation for the purpose of taxation (in the common language of men), is the exchange value."

[154] The Courts have also considered that a loss in value can be estimated using the appraisal technique of capitalization of the money lost. The cases cited were ***B.C. Timber v. Assessor of Area #18 – Trail Grand Forks B.C.W.L.D. 942*** at paras. 17-19 (Exhibit C1, Tab 24), ***Re Royalite Oil Company Limited, [1957] B.C.J. No. 155*** (Exhibit C1, Tab 25) and ***Witral Holdings Ltd. v. The Alberta Assessment Appeal Board, [1996] A.J. No. 806*** at paras. 31-33 (Exhibit C1, Tab 29).

[155] The Applicant also noted that there is no secondary market for assets that are taken out of service. As a result, there is nominal value in the assets once they are no longer required.

[156] The Provincial Government recognized the depressed natural gas prices as evidenced by the enactment of the Shallow Gas Tax Relief Program introduced for the 2019TY, and the continuation of the program for the following three (3) years. The Applicant noted that the program provides property tax relief for linear assets largely in Zone A, and not for M&E, in the 2019TY and going forward is a reduction to the assessed value of the applicable assets.

[157] The Applicant suggested that any form of additional depreciation awarded in Schedule D could be reviewed annually and revised if the natural gas market improves.

Valuation Standard

[158] The Applicant confirmed the valuation standard for buildings and structures was market value, and for M&E it was a regulated standard.

[159] The Applicant noted that 98% of the property under complaint is at the maximum allowable depreciation, which is 40% of value remaining. The Applicant argued there is no relationship between the value of the assets and the assessment of the assets. The Applicant opined it could be argued the assets have no value; however, the Applicant understood this was unsustainable for the assessment system.

[160] The Applicant stated there was no dispute on the methodology with respect to the calculation of the assessment of M&E and in particular Schedules A, B C, or the regulated provision of 77%. It maintained the Respondent had not correctly applied Schedule D in the assessment calculations.

[161] The Applicant acknowledged that the M&E assessments are based on prescribed values or are based on the CCRG (actual costs subject to adjustments). The Applicant also maintains that while Schedule A may have market value concepts, it does not establish market value. The Applicant states that in ***Canadian Natural Resources Limited v. RM of Wood Buffalo, CARB Order 001-2013*** (Exhibit C31, Tab 30, para. 283-301) that Board recognized that over-built property should not be subject to assessment, and that the loss in value could be recognized in either Schedule A or D.

[162] The Applicant's position is that there is a loss in value of the M&E attributed to economic obsolescence, and that clear direction exists in Schedule D to allow for additional depreciation in recognition of that loss. Schedule D within the ***Alberta Machinery & Equipment Assessment Minister's Guidelines*** (M&E Guidelines) states:

> For any depreciation that is not reflected in Schedule C, the assessor may adjust for additional depreciation provided acceptable evidence of such loss in value exists.

[163] The Applicant noted that the Respondents position was that valuation standards changed with the advent of the 1995 legislation. The Applicant's position was that in ***Lougheed Tomasson Inc. v. Calgary (City of), 2000 ABCA 81*** (Lougheed), the Court decision centered around the transition between the amended MGA and Transitional Regulation 372/94 in the mid 1990's. This case was the first Court decision related to the new legislation and confirmed that ***Shell Canada*** which was upheld by an Alberta Court of Appeal decision decided taxpayers were to be assessed on the fair actual value and that the assessor was required to be fair and equitable in determining the value of other similar improvements in the municipality. The Court in **Lougheed** determined that "while the defined term and standard against which the assessment is to be measured, namely fair actual value, may have changed with the passage of time, the principles remain" and that is that the assessment is based on modified cost less depreciation.

[164] The Applicant also noted that ***Racquet Club v. Saanich, [1979] B.C.J. No. 1090*** at paras. 5-6 (Exhibit C1, Tab 30) determined that the cost approach can represent a valid approach to value, absent economic obsolescence.

[165] The Applicant noted that the Respondent characterized the issue as a throughput issue, in that the Applicant had identified that the gas plants were typically operating at less than 40% of their design capacity. The Applicant asserted that it is not a throughput issue; rather the complaint is based on economic obsolescence. The Applicant argued that even if the gas facilities were operating at 100% of design capacity, the complaint would still proceed due to the poor economics of the plants. However, Mr. Beatty provided an option to consider a Schedule D reduction based on throughput.

[166] In dealing with fairness and equity in the application of the valuation standard, the Applicant cited the most recent decision was ***Alberta (Minister of Municipal Affairs) v Ember Resources Inc., 2018 ABQB 971*** (Ember) (Exhibit C31, Tab 31). The Court, in a judicial review of the Board decision, confirmed the Board Order which found the MGA was not simply a process where the mathematical calculation was double checked. In the Board Decision concerning a linear assessment, the Board concluded that a correct interpretation and application of the Linear Guidelines should account for "unintended, arbitrary and inequitable effects".

[167] The Applicant also referred to ***GT Group Telecom Services Corp., MGB 117/04*** (GT Group) (Exhibit R9, Tab 6) and suggests that if the decision is read in the context of the MGA and Court decision in **Ember**, the equity principle is far broader than that suggested by the Respondent.

Schedule D

[168] The requirement for the application of Schedule D depreciation is to provide for any depreciation not accounted for in Schedule C. The requirement is also that the Applicant must provide evidence that a loss in value exists. The Applicant opined that under a liberal reading of Schedule D, or reading the legislation as a whole, Schedule D is to recognize losses not accounted for in Schedule C, which only reflects normal physical and normal functional depreciation.

[169] The Applicant provided an expert on assessment (Mr. Matt Pierson) who discussed why Schedule D depreciation should be applied to the assessment. The Applicant noted that the Respondent did not deny that additional depreciation could be considered; rather the assessor relies on a Provincial Assessor Directive dated November 20, 2018, which states that economic obsolescence is not to be considered for application of Schedule D.

[170] The Applicant's position is that the Directive is irrelevant. The Directive was issued after the 2018TY assessments were issued, and as such the Applicant could not have been aware that the Provincial Assessor had deemed economic obsolescence as not qualifying for the application of Schedule D. In addition, the clarification e-mail issued by the Provincial Assessor dated December 11, 2018 confirmed that the Directive was not a policy change. The clarification also notes that additional depreciation should not be of a general nature; however, site specific application could be considered.

[171] The Applicant stated that the Directive has no force of law and should not be considered. This was dealt with in two Court Decisions - ***Minburn No 27 (County) v Poco Petroleums Ltd., [1996] AJ No 1135 (QB)*** (Exhibit C31, Tab 21) and ***Canadian Natural Resources Ltd. v Red Deer (County), [2016 AJ No 1089] (QB)*** (Exhibit C31, Tab 22) which both concluded Provincial Assessor Directives should be afforded nominal weight when the Board considers its decision.

[172] The Applicant stated that since at least 1967, there has been an evolution of the concept of Schedule D which considers "modified cost less all forms of depreciation". As well, ***Daishowa*** provides that the "…assessor's inquiry into whether a Schedule D reduction is required in the interests of fairness should not be restricted by an unduly restrictive set of criteria." (Exhibit C1, Tab 13, para. 60)

[173] The Applicant referred to a Saskatchewan Court of Appeal Decision ***Sasco Developments Inc. v Moose Jaw (City), [2000] S.J. No. 438*** (Sasco) which determined that a result-oriented interpretation by the assessor is an abuse of the assessor's discretion (Exhibit C31, Tab 29).

[174] The Applicant also referred to the Sheila Young Report and her reference to Hansard (Exhibit R19, para. 26). The Applicant disputes her characterization that CCRG excluded costs, a truncated depreciation curve, 77% statutory level and no education taxes on M&E mitigate general economic obsolescence. The Applicant suggests that the Alberta Hansard reflects the Legislature's desire to inspire industrial development by implementing those measures (Exhibit C31, Tab 23) and was not intended to offset economic obsolescence.

[175] ***Shell Canada*** also considered whether the Respondent's characterization that the initial 25% allowance in Schedule C formed a part of depreciation and determined it was irrelevant. ***Shell Canada***, and the Board, considered the 25% as a "political gift" which was not depreciation at all (Exhibit C1, Tab 12, para. 14).

[176] The Applicant also contends that the use of the wording "any loss in value" in Schedule D considers the concept of market value in the assessment process. The Applicant cited ***Canadian Natural Resources Ltd. v. Calgary (City), [2007] AMGB 194*** (Exhibit C31, Tab 25, para. 35) which was upheld on judicial review ***Canadian Natural Resources Ltd. v. Calgary (City), [2010] AJ No. 1584 (Q.B.),*** Exhibit C31, Tab 25). These decisions, in the context of business assessment with specific reference to tenant improvements, confirm that the concept of value is generally to be net of expenses. The Applicant opined that it is, therefore, logical that property assessment must include all forms of depreciation, including economic obsolescence. This was also consistent with a prior decision ***Governor and Co. of Adventures of England Trading into Hudson's Bay v. Calgary (City), [1980] AJ No. 321*** (Exhibit C31, Tab 26).

Legal Decisions and Precedent Related to Schedule D Application

[177] The Applicant contends that there is no legislative or regulatory obstacle to the application of economic obsolescence as a basis for loss in the value of M&E assets. If the Minister had intended to exclude economic obsolescence, there has been ample time to quantify Schedule D, as the Minister has in linear, farm and electrical power generation. For example, in linear assessment Schedule D, only certain assets with a specific code identified can be considered for additional depreciation. The Schedule D wording states "The additional depreciation for linear property described in Schedule D is exhaustive. No additional depreciation can be given by the assessor." The Applicant also noted that the ***Daishowa*** decision was in 2009 and was for the 2007TY and the 2008TY. If the Legislature, or the Minister, took issue with the Board's granting of additional depreciation, a change in legislation could have addressed this by a change in wording of Schedule D. The Provincial Assessor should not place artificial restrictions on the interpretation of Schedule D.

[178] The Applicant noted that in 2009, unfavorable economic conditions occurred in the global pulp and paper industry. As a result of those economic challenges, the assessment of the assets of impacted companies were afforded consideration under Schedule D of the Minister's Guidelines. The changes made to the assessments accounted for factors beyond "normal" deprecation which would have been included in Schedule C.

[179] In particular, the Applicant cited the ***Daishowa*** decision where the Board determined that the assessor had incorrectly assumed that the provisions of Schedule D should not apply. That Board decided that the assessor's decision was inappropriate, and that Schedule D should be read broadly, and additional depreciation should be applied. The Applicant noted that this decision was the latest Schedule D issue adjudicated by the MGB and the circumstances are similar in this complaint. The ***Daishowa*** decision has not been appealed.

[180] The ***Daishowa*** decision also determined that any application for additional depreciation could reduce the assessment to less than the 40% remaining value contemplated in Schedule C.

[181] In ***Daishowa***, the Applicant noted that the Board cited the following reasons for its decision (Exhibit C1, Tab 13):

a. The plain meaning of "any depreciation that is not reflected in Schedule C" is "that they must show depreciation not reflected under Schedule C" (para.57);
b. The wording of M&E Schedule D contrasts significantly with the Linear Schedule D, such that M&E Schedule D is much broader than the Linear Schedule D definition (para. 58);
c. Any catastrophic event, or an event that shortens the life of the facility are not the only criteria to apply Schedule D, nor must the criteria be site specific. The "inquiry can incorporate a broader group of criteria, including physical and economic criteria that are capable of showing a significant additional loss in value" (para. 59); and,
d. "The assessor's inquiry into whether a Schedule D reduction is required in the interests of fairness should not be restricted by an unduly restrictive set of criteria." (para. 60)

[182] The Applicant noted that after the ***Daishowa*** decision, the forestry industry economics improved. As a result, the Schedule D additional deduction previously provided has been removed from lumber mills. There continues to be some application of Schedule D to pulp and paper mills.

[183] The Applicant disputed the concept put forward by the Respondent that the Board decision in ***Daishowa*** did not consider the ***BP/Woodlands*** decision. The Respondent's position was recited by the Board with clear reference to ***BP/Woodland*** (Exhibit C1, Tab 13, para. 49 to 54)

[184] In ***Shell Canada Limited v the County of Red Deer No 23, Assessment Appeal Board No. 19/68,*** the Board ordered a 35% additional depreciation allowance because of a 1965 Oil and Gas Conservation Board order that implemented a 51.34% reduction in the plant throughput.

[185] In ***Unocal Canada Limited v Improvement District No 14, Alberta Assessment Appeal Board No. 24/88***, the Board ordered a 50% additional depreciation allowance where production was substantially reduced due to a design flaw in a coal mine development. The original assessment had included a 15% additional depreciation allowance.

[186] The Applicant referred to three MGB Decisions cited by the Respondent. These decisions were ***Amoco/Greenview*** where the Board concluded that Schedule C provided for "normal" depreciation which is captured in gas plants operating "normally" (Exhibit R9, page 207). The Applicant contends that the properties under complaint are not acting normally due to diminished production flow rates. As well, in ***BP/Greenview*** (Exhibit R9, page 219) that Board found that for economic obsolescence under Schedule D "…it must be proven that the improvement is suffering from a situation not normally associated with the

normal condition or operation of similar or like improvements." (Exhibit R9, page 89) ***BP/Woodland*** also concurred with the ***Amoco/Greenview*** Board order. In addition, that Board Decision discussed sulphur production and noted that if the Applicant had presented better evidence, the Board may have considered whether sulphur production played a significant role in the plant operation, and if so, the "…MGB might consider a permanent collapse in the sulphur market acceptable evidence of the kind of unanticipated loss intended to be covered by Schedule D". (Exhibit R9, page 100) It was also the Applicant's position that ***BP/Woodland*** and ***Amoco/Greenview*** dealt with throughput issues and not economic obsolescence, and as such the cases are not relevant to the subject complaint, which deals with economic obsolescence.

[187] The Applicant also testified that there is precedent in terms of locational issues contributing to economic obsolescence and providing for Schedule D additional depreciation. It was its position that the entire Alberta gas production market is locationally disadvantaged in that historically its markets were primarily the USA eastern seaboard or Asia. This is no longer the situation, resulting in a two-fold effect. First is the additional transportation costs associated with getting the gas to the market, compared to its North American competition which is significantly closer to the end market. The second is limited pipeline capacity which has created a bottleneck for exporting Alberta gas.

[188] The Applicant cited the ***Shell Canada*** decision which allowed a 25% Schedule D allowance for a locational issue with the plant that impacted its economic viability. This decision also reflected on the requirement to achieve fair actual value and the decision referred to ***T. Eaton Realty Company Ltd. v. Alberta Assessment Appeal Board et al, (1992), 1 Alta L.R. (3d) 394 (C.A.)*** (T. Eaton) where the Court said "that fair actual value must have relation to the underlying benchmark of market value." It was the Applicant's position that while the current standard is not fair actual value, the concept that the assessment is based on benchmarks of market value should be considered. The ***Shell Canada*** decision was in response to Shell Canada's appeal of the 1985TY and the 1986TY, which were based on the 1984 Assessment Manual. The same depreciation table from the 1984 Manual has been carried forward to the current day manuals.

[189] The Applicant testified that in ***Daishowa*** and ***Shell Canada***, there was not a mathematical formula involved in the application of Schedule D. In both decisions, the Board relied on its knowledge and expertise in making its decision.

[190] Both ***Irrigation Canal Power Co-operative Ltd. v Warner (County) [1996] AMGBO No 266*** as well as ***Northern Lite Canola Inc. v Sexsmith (Town) [1997] AMGBO No 147***, were during the mid-1990's transition period and were evidence that economic obsolescence had been applied to an electricity plant and a seed plant. This demonstrated that the application of economic obsolescence was not limited to the gas industry.

[191] Another decision cited was ***J.N.A. Holdings Ltd., M.J.F. Holdings Ltd., Kenneth Webb, Lynn A. Patrick and Generation Equities Ltd. and The Alberta Assessment Appeal Board, The City of Edmonton and The Assessor of the City of Edmonton, ABQB 8903-20688*** (JNA). The Applicant noted that this decision dealt with definitions of types of depreciation, including a definition of economic obsolescence as well as how it should be considered. Economic obsolescence was defined as "the loss in fair actual value of an improvement attributed to the property which reduces the utility of the improvement in that location." (Exhibit C1, Tab 10)

[192] ***JNA*** also makes multiple references to ***CNR v. Saanich [1988] 6. W.W.R. 754,*** a British Columbia Supreme Court decision, which included an expanded definition of economic obsolescence which included "…or by the imposition of some other economic law of change."

[193] Courts and Assessment Tribunals have held for the requirement to account for additional depreciation in industrial facilities. This obsolescence is in the form of functional (internal) and economic (external) obsolescence.

Legislative Intent

[194] The Applicant opined that the Legislature is assumed to be aware of jurisprudence, as annually the Minister's Guidelines are reviewed and issued. The legislators have avoided revising the direction for Schedule D in M&E.

[195] The Applicant acknowledged the principle that "…the words of an enactment are meant to be read in their entire context and in their grammatical and ordinary sense, harmonious with the legislative scheme is applicable." ***Placer Dome Canada Ltd. v Ontario (Minister of Finance), [2006] 1 SCR 715 (QL); 2006 SCC 20*** at para. 21 (Exhibit C31, para. 79)

[196] The Applicant noted that in dealing with taxation, greater emphasis can also be placed on a textual interpretation. The Applicant opined that where the interpretive approach is informed by the level of precision and clarity with which a taxing provision is drafted, and there is no ambiguity in analyzing a provision's meaning, then it must be applied. The Applicant testified there is no ambiguity in the interpretation of Schedule D for M&E.

[197] The Applicant's position is that the Respondent has strayed from clear and unambiguous language to apply artificial restrictions and its interpretation of Schedule D. This is not to be considered as the Court determined in ***65302 British Columbia Ltd. v Canada [1999] 3 SCR 804*** (Exhibit C31 Tab 28, para. 51)

Methodology

[198] The Applicant provided an expert in appraisal (Mr. D. Allan Beatty) to provide his analysis of the effect of Schedule D and additional depreciation, and his opinion on the value of the M&E under complaint. Mr. Beatty attempted to reconcile the effects of economic obsolescence and to provide an acceptable formula to consider Schedule D allowances.

[199] The Applicant noted that Mr. Beatty had considered three (3) gas plants to conclude that a 60% reduction based on Schedule D should be applied to all M&E. However, the sufficiency of three (3) plants was supplemented by a total of 32 facilities which included nine (9) plants, eight (8) compressor stations, three (3) batteries, nine (9) separators, one (1) disposal well, one (1) gas gathering plant and one (1) well site. Mr. Beatty demonstrated that the assets were "homogeneous" and further noted that the facilities included numerous individual assets comprising the facilities. It was the Applicant's position that there was no doubt as to the sufficiency of this analysis.

[200] To determine a model, Mr. Beatty considered the "funnel theory", where the well sites are the first level, compressor stations the second level and the final level was the gas plant. The rolled-up assets

represent the sum of the levels and the "funnel theory" is a logical connection to link the throughput of gas plants through the Zones and to demonstrate the decline in production.

[201] In response to the Respondent's criticism that the sample size was "statistically too small" the Applicant's position is that the gas plants were representative of all 1,129 properties under dispute in the 2019TY. The three (3) plants were chosen as examples of different types of gas plants and rather than statistical sampling, Mr. Beatty applied appraiser professional judgement. Mr. Beatty also testified that he had reviewed the records of 76 gas plants and determined that the actual production to design capacity ratio that he observed supported his proposed reduction.

[202] The Applicant suggested that if the Respondent felt the sample size was too small, it should have provided a study that the Respondent considered representative. It was the Applicant's position that the only gas plant the Respondent put forward was the Gold Creek gas plant. The Applicant testified this plant was an anomaly in that it not only processed gas for the Applicant (albeit at lower than 40% of design capacity), but it also processed gas under third party take or pay contracts. Notwithstanding that the overall throughput was between 60-90%, the Respondent noted this plant was not typical. As noted previously, this plant and another (Progress) were withdrawn from the complaint by the Applicant.

[203] The Applicant testified further that the Respondent was endeavoring to confuse a statistical sampling issue, with a sufficiency or weight of evidence issue.

[204] The Applicant acknowledged the concept of "blinding" assets where the Provincial Assessor had a policy in place that allows for assets not being used, and which meet certain conditions that were not disputed, could remain on the roll; however, the assessed value could be reduced to zero. It was the Applicant's position that the issue with blinding does not deal with super-adequacies of plants, where those plants would expect additional drilling to provide replenishment, which was not occurring.

[205] Mr. Beatty testified that the methodology proposed was representative of all assets and could be applied across the board.

Natural Decline

[206] The Applicant dealt with the issue of Production Flow Rates (PFR) having a natural decline curve as introduced by Dr. Edward Thompson, and whether natural decline in production capability is considered in Schedule C of the M&E Guidelines. In the alternative there was a question as to whether PFR is offset by replenishment through drilling new wells. While production capability can be offset by replenishment, the effect of no new drilling activity due to a poor natural gas price, is a decline in production capability.

[207] The Applicant's position is that Dr. Thompson's production curves are flawed for two (2) reasons. First, the application of the curve should not be applied to gas plants, as the calculation was designed for a "closed reservoir", and better applied to wells rather than gas plants. Second, the calculations did not coincide with the timing of the opening of the gas plant to the current date. For example, the Martin Hills plant was approximately 50 years old (1969/70 vintage). The data analyzed by Dr. Thompson began about 2000, and as a result the first 30 years of the plant life were not considered in the graph.

[208] Dr. Thompson also calculated the ratio based on a re-licensing of Marten Hills. The Applicant testified that while the re-licensing did occur, the actual plant was built for the original licensed capacity and that should be the unit of comparison utilized in determining any additional depreciation.

[209] It was the Applicant's position that the natural decline issue is irrelevant to the economic obsolescence discussion. It was its position that the PFR could be 100% of capacity and the complaint would still go forward because of economic obsolescence.]

Summary

[210] While the Board has allowed Dr. Thompson's testimony, the Applicant contends it should receive little or no weight as Dr. Thompson is an expert in neither appraisal nor assessment matters. It remains the Applicant's position that Dr. Thompson's testimony is neither helpful nor necessary for the Board to consider and that he was advocating for the Respondent rather than acting as an expert witness.

[211] In reference to whether the Applicant has met the burden of proof, it is the Applicant's contention that is has. In ***Pan Canadian Energy Services v. Alberta (Minister of Municipal Affairs), [2008] A.J. No. 732*** (*Pan Canadian*) the Court determined that where the subject matter of an allegation is known by a party, that party must prove it - whether affirmative or negative. It is the Applicant's position they have proved the matter of the complaint, whereas the Respondent has not disproved the Applicant's position. The ***Pan Canadian*** matter was an appeal of linear assessment where the Court concluded that as a matter of procedural fairness, the Linear Assessor carried the burden of proof for establishing the relationship between Schedule C and the potential sources of obsolescence for Schedule D.

[212] In ***Pan Canadian***, the Board also affirmed that while market value and depreciated cost may have conceptual differences, market value was relevant in determining whether economic obsolescence had occurred.

[213] The Applicants' conclusion is:

> The standard for industrial assessment in Alberta is modified cost less depreciation of all forms. Modified cost less depreciation was the standard under the Municipal Taxation Act and remans (sic) so to the current day under the Municipal Government Act. As indicated by the Court of Appeal in Lougheed while the terminology may have changed the standard has not. Depreciation is a loss in value from any cause. No words of limitation exist in the M&E Guidelines that could lead to a different conclusion. This has been historically the case in assessment practice and accepted in Board Orders. Quite simply put when the product produced has fallen in price to the extend (sic) that net backs are negative or minimal, the result is essentially a total loss in value. (Exhibit C31, para. 96)

RESPONDENT'S TESTIMONY

Alberta Municipal Affairs (Minard Report) – Michael Minard

[214] Mr. Michael Minard, B Comm., AMAA, is the Manager, Major Plants with Alberta Municipal Affairs – Assessment Services Branch. At the time the report was prepared he was Acting Manager, Major

Plants. Mr. Minard has his Accredited Municipal Assessor of Alberta designation from the Alberta Assessor's Association and is a candidate member of the Appraisal Institute of Canada.

[215] The Report Mr. Minard spoke to was Exhibit R-16.

Analysis of Property Under Complaint

[216] Mr. Minard confirmed that there were 493 properties under complaint in 2018TY and 1,129 properties in 2019TY. He also reviewed the assessments and determined that there were eight property types under complaint in 2018TY and 14 property types under complaint in 2019TY. This did not differ from the property types identified by the Kent McPherson Report and the Dr. Edward Thompson Report.

[217] Mr. Minard provided brief descriptions and photographs of separator sites, compressor stations, gas plants, batteries, flow drip separators, and line heaters. The foregoing are among the property types having the greatest number of assets (Exhibit R16, pages 4-12).

[218] Mr. Minard also submitted assessment details for each of the properties that he furnished descriptions and photographs for (Exhibit R16, Tab 1, pages 13-83). In addition, he provided a summary of the information contained in the Industrial Details sheets.

[219] Two graphs, one for the 2018TY and the other the 2019TY, were presented which outlined the number of properties in each property type (Exhibit R16, Tab 1, page 84). The largest groups by number included separator sites, compressor sites and flow drip separators.

[220] A second set of graphs outlined the average assessment by property type (Exhibit R16, Tab 1, page 88). The property types with the highest average assessed value included gas plants, compressor sites and batteries.

Kent McPherson Report

[221] Mr. Minard noted that the Kent McPherson Report relied on a production to capacity ratio review of three gas plant properties (Dunvegan, Seiu Lake and Martin Hills). From this analysis it was determined that a 60% Schedule D additional depreciation allowance should be applied to the entire inventory of assets.

[222] Mr. Minard opined that a sample of three gas plants is not representative of the large number of property types. It was his testimony that 98% of the properties under complaint in the 2018TY and 95% of those complaints in the 2019TY, are not gas plants.

[223] In addition, Mr. Minard submitted that the three gas plants are not representative of the property types, because the assessed values of these gas plants are much higher than the assessed values of other property types. Further, these three gas plants were, on average, higher than and therefore not representative of other gas plant assessments (Exhibit R16, Tab 1, page 88).

[224] Mr. Minard disagreed with using a production to capacity ratio to determine property assessment values.

[225] Mr. Minard was questioned as to whether he adopted the "funnel theory" advanced by Mr. Beatty, where associated assets that flowed into the gas plant would be treated similarly for Schedule D purposes. Mr. Minard acknowledged that while he understood the logic, these characteristics would not be a consideration when assessing a property using the regulated assessment scheme.

[226] In questioning, Mr. Minard confirmed that there are instances where the buildings and structures are assessed at higher values than their original cost. Mr. Minard stated that this likely results from the application of the "Assessment Year Modifier", which is used to determine the adjusted cost in the assessment year. In similar questioning concerning M&E assessments increasing year over year, Mr. Minard testified this could occur when the Schedule C calculation is at its maximum. The Assessment Year Modifier, given such a circumstance, could result in the M&E assessed value increasing.

[227] Mr. Minard stated that "the three subject properties in Mr. Beatty's analysis are not representative of the complete inventory and therefore, broad conclusions cannot be applied from the three subject property gas plant analysis to the overall inventory of properties under appeal." (Exhibit R16, Tab1, page 89)

DMA Report

[228] Mr. Minard noted that the DMA Report provided three historic detail assessment sheets to support a Schedule D allowance (Exhibit C4, Tab 8, pages 135-137). It was Mr. Minard's testimony that all three properties related to a reduction applied to buildings and structures. Two properties were dated assessments (2009TY, 2013TY) and two of them had equipment removed/disconnected and the property had been "mothballed".

[229] It was Mr. Minard's position that Schedule D was not applied in the instances referred to in the DMA Report for economic obsolescence, as is the request in this complaint. As well the assessments were not for M&E. Mr. Minard noted that in all three (3) properties the application of Schedule D was based on a site-specific review of the property and not a global reason. Further, that the adjustments were not related to regulated assessments but on buildings and structures assessed on a different valuation standard.

CNRL Report

[230] Mr. Minard took no position on whether the zones created by the Appellant were correct. He stated that the assessments are not prepared with a geographical consideration.

[231] Mr. Minard observed that the CNRL Report stated that each group has unique specifications and characteristics and spoke to the identified components and makeup of the underlying gas assets. It was Mr. Minard's testimony that the regulated assessment process for these properties is based on site specific characteristics of the properties (i.e., individual assets) under the regulated assessment process. "The assessor must equitably **analyze the property's unique** specifications and characteristics to determine the regulated assessment for all Designated Industrial Properties." (emphasis added by Mr. Minard, Exhibit R16, Tab 3, page 91) "Broad adjustments on the basis of ownership, general location or general economic factors are not allowable based on the assessment legislation". He referenced MGA s.292(2) to indicate the characteristics referenced by Mr. Pole (e.g., "well density") are not "specified in the regulations".

Building & Structure Recommendation

[232] Mr. Minard provided a summary of the building and structures proposed reductions (Exhibit R16, Tab 4, page 92. He testified that there were proposed reductions of approximately 60% for building and structures under complaint. This included 12 properties for 2018TY and 472 properties for 2019TY. The reductions amounted to $1.3 million and $20.0 million, respectively.

[233] Mr. Minard further testified that a further $78 million in reductions were identified and would be applied in 2020TY. The proposed reduction was the result of an amended policy for buildings and structures where the portion of the building and structure housing out of service (blinded) M&E would receive a reduction in the assessment.

Application of Schedule D

[234] Mr. Minard's report did not address the mechanics of the application of Schedule D. There was significant questioning by the Applicant as to how Schedule D was considered and applied by the Respondent.

[235] Mr. Minard's position was that the Respondent was not legislatively permitted to apply "general economics" to M&E regulated assessment. When questioned, his position was that the words of the legislation did not specify to apply "general economic obsolescence factors". In addition, the assessment of M&E is based on a regulated assessment regime and "nowhere does it say to take that into effect". Mr. Minard also relied on the Directive issued by the Provincial Assessor from November 2018 as well as the e-mail clarification from December 2018. The core of those directives was that general economic obsolescence is not to be considered in the application of Schedule D.

[236] Upon questioning, Mr. Minard also testified that it was the practice of the Respondent to not allow general economic obsolescence. That practice was in place long before the issuing of the November 2018 directive. He did not provide any evidence of prior directives or policy statements to support this contention.

[237] In further questioning as to whether a property could suffer a loss due to general economic obsolescence, he confirmed that for buildings and structures this could be considered; however, M&E was different and an economic loss in value could not be considered. No industry trending should be considered when determining economic obsolescence.

[238] Mr. Minard also stated that to determine if there is economic obsolescence in M&E, the only way it can be considered is to review the property to determine if there is "any site-specific impairment that the property might be having".

[239] An additional depreciation adjustment would look at "any site-specific issues or abnormalities that are affecting the equipment". He further opined that the utility of the property can be considered, and that MRAT stipulates following the standards. There is no provision for considering economics in the scheme of assessing.

[240] Mr. Minard confirmed that he was aware that there were assessments where Schedule D additional depreciation was provided. He expressed that of the more than 75,000 properties dealt with, only a small

number receive this form of allowance. He was unable to specifically identify the properties that receive a Schedule D allowance. He testified that he was unaware if there were any oil and gas properties which received the allowance. Under further questioning, he confirmed that all properties receiving Schedule D allowances are routinely reviewed to determine the reason it is being applied and whether it should be continued. Mr. Minard testified that the Respondent is trying to remove any inconsistencies in terms of assessment. He did not believe the definition of Schedule D had changed since 2009.

[241] When questioned concerning the ***Daishowa*** and ***Shell Canada*** decisions, Mr. Minard advised that he was generally aware of the ***Daishowa*** decision but not of specific details, and he did not believe he was aware of the ***Shell Canada*** decision. Further, that the adjustments determined in the ***Daishowa*** decision are not aligned with the present Provincial Assessor's direction and such adjustments have not been made since 2017. He argued that "uneconomic" conditions should relate to facilities themselves and site-specific impairments to production rather than economic considerations. He argued that general economic considerations were akin to business valuation, something not relevant to regulated assessment.

[242] Mr. Minard was also asked to confirm that since at least 1967, the form of assessment for M&E was a modified reproduction cost excluding divergence as necessary, less any normal or abnormal depreciation. Mr. Minard testified that he was not familiar with prior regimes; however, he did not agree with the premise of modified reproduction costs and stated that M&E assessment was based on a regulated assessment regime.

[243] The Board inquired as to when the Respondent became aware of the request for Schedule D consideration. Mr. Minard first indicated that the request was made by the Applicant on the complaint form for the 2018TY complaint. He later indicated that the request was made when the Applicant responded to the Assessor's request for information. Mr. Minard agreed that the request for information would have preceded the issuing of the assessment notice. He was unable to provide further clarity to this question.

Alberta Municipal Affairs (Young Report) – Sheila Young

[244] Ms. Sheila Young, Bachelor Business Administration, AACI, CAE, is the Director, Assessment and Property Tax Policy with Alberta Municipal Affairs – Assessment Services Branch. Ms. Young has an Accredited Appraiser Canadian Institute (AACI) designation from the Appraisal Institute of Canada and a Certified Assessment Valuator (CAE) designation from the International Association of Assessing Officers.

[245] The Report Ms. Young spoke to was Exhibit R-19.

[246] In questioning, Ms. Young was asked whether her report relied on her personal opinions, and whether many of her remarks can be referred to specific legislation. Ms. Young noted that her report was based on her experience with the legislation, the Minister's Guidelines, her position in working with the Minister and Deputy Ministers to create guidelines and her in-house training and application by assessors. She also confirmed that she has been involved with review of the Minister's Guidelines since 2007. She confirmed no changes have been made to Schedule D in that time; however, she stated that it has been reviewed.

Legislated Framework

[247] Ms. Young confirmed the two valuation standards for property assessment in Alberta, are the market value standard and the regulated standard. Market value is simply as stated. The regulated standard is applied to properties that seldom trade in the marketplace, cross municipalities and municipal boundaries, and are unique in nature.

[248] For regulated properties, prescribed rates and procedures are applied. Designated Industrial Property is included in the regulated standard and includes M&E, linear property, and in some cases, land, and buildings. The regulated valuation standard is specified in MRAT and the procedures are set out in the 2018 Minister's Guidelines. The latter is reviewed by the Minister and approved annually.

[249] Ms. Young testified that it is "the goal of the regulated assessment standard to achieve consistent predictable assessments which are not subject to market trends or the impact of commodity prices. This provides a balance not subject to the greater fluctuations occasionally seen with the market value standard. This objective is shown through policies such as excluded costs from the CCRG, truncated depreciation, 77 percent statutory level, and zero education taxes for machinery and equipment." (Exhibit R19, para 7) Under questioning she indicated this was her understanding of the system based on her experience.

[250] The designated industrial property standard is applied across the province and while properties may be unique, the process is the same.

[251] Ms. Young provided a chart to contrast the market valuation standard and the regulated valuation standard (Exhibit R19, Appendix 2).

[252] Ms. Young opined that the Minister's Guidelines do not refer to market value, fair actual value or any value described in appraisal, accounting, business valuations or cost estimate theories.

[253] Land and buildings forming a part of designated industrial property must be assessed using the Valuation Guide for Special Purpose Property, which was written in 1998.

[254] Ms. Young also expressed an opinion, based on her understanding and training, that if the cost approach proposed in the Kent McPherson Report, or the business valuation principles outlined in the Deloitte Report were used, the Alberta government would mandate that all project costs would need to be included. This is opposite to the current process for assessing M&E where certain costs outlined in the CCRG are excluded. Ms. Young further stated that if all construction costs were included then market based depreciation could apply. Further, that there can be no combination of modified costs and market concepts for the purpose of quantifying depreciation under the regulated assessment process. "Market value concepts don't apply in the regulated process".

[255] Additionally, Ms. Young affirmed that the calculation for designated industrial property M&E under the regulated process is:

> Schedule A x Schedule B x Schedule C x Schedule D x Statutory Level
>
> > Schedule A – Base Cost - determines the cost either on a list of equipment in Schedule A, or if the property is not listed then the cost is based on the property cost (using included costs and deducting excluded costs) and considering a cost factor to convert the cost from the current year value to 2005 values.
> >
> > Schedule B - Assessment Year Modifier – sets out the modifier applied to the Schedule A base cost to reflect the cost in the assessment year.
> >
> > Schedule C – Depreciation – depreciation is not market value depreciation. Rather the Minister Guidelines identifies a prescribed age life, loosely based on the Iowa Curve model which considers physical conditions, functional issues, and property mortality. The depreciation factors are truncated (start at 75% and end at 40%).
> >
> > Schedule D – Additional Depreciation – "For any depreciation that is not reflected in Schedule C, the assessor may adjust for additional depreciation provided acceptable evidence of such loss in value exists."
> >
> > Statutory Level – established in the Minister's Guidelines as 77%.

Schedule D – Additional Depreciation

[256] Both Parties concur that there are no objections to the way the properties were assessed based on Schedules A, B or C, or the 77% statutory level.

[257] Ms. Young testified that acceptable evidence for a Schedule D allowance is restricted to a site-specific consideration, based on the November 2018 Directive and clarification. Her interpretation was that broad general economic conditions are not considered. The rationale behind the interpretation is that M&E receives immediate depreciation of 25%, the assessment is reduced by a further 23% because of the statutory level and the elimination of the education tax on M&E several years ago. Ms. Young included the following from the Directive:

> Additional depreciation may be applied under Schedule D to account for functional obsolescence, external obsolescence or locational obsolescence but must not be applied for economic conditions.

[258] Ms. Young also suggested some questions an assessor may consider in determining whether acceptable evidence is provided:

a. Is the M&E operational? Could the M&E be disabled and removed from the assessment?
b. Why is the assessed person making the request? Is it due to reduced output and if so, was the output reduced to fulfill another business need?

c. Should the assessed person have expected the reduced output?
d. How does the output of the M&E compare to similar properties? How does it compare to a typical property?
e. Is any reduction to output caused by site specific issues such as poor design? Are there plans to correct the site-specific issue?

[259] Ms. Young also noted that the Directive indicated the following:

> "Schedule D depreciation must not be applied for economic conditions and a reduction in output must be due to circumstances within the facility itself.
>
> The assessor must consider the factors related to the age of the machinery and equipment when applying additional depreciation and determine whether the request for additional depreciation is unrelated to age.
>
> The determination of Schedule D should not be done on a one-to-one relationship between the reduction of a facility's output and the additional depreciation applied."

[260] Ms. Young further opined that measuring Schedule D additional depreciation is difficult, as there are no formulae or specific requirements. She further stated that this was deliberate in that it applies to many types of M&E and all types of manufacturing and processing facilities. This would allow for site specific considerations where application of Schedule D could be as broad ranging as the definition. The proviso would be that acceptable evidence must be based on the regulated valuation standard and not in a market value context, and not for general economic conditions.

[261] Ms. Young considered that certain criteria should apply, including:

a. Schedule D is applied to the portion of the facility impacted;
b. If the cost is not assessed, it cannot receive additional depreciation;
c. M&E is not assessed at market value; therefore, methods to measure market value depreciation do not apply;
d. The severity and duration of the loss in value must be considered;
e. A one-to-one relationship between a reduction in output and depreciation does not apply;
f. Equity with other similar properties must be considered;
g. Schedule D, if applied, should be reviewed annually to confirm whether continuation is warranted; and
h. Documents supporting a request for Schedule D need to be supplied by the assessed person.

[262] Ms. Young also testified that S.293 of the MGA requires:

> "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

> 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."

[263] Ms. Young also noted that the DMA Report concurs with the provisions of MGA s.293 and cited "**Assessment systems are designed to allow for the relative value** of one property in relation to another to be reflected in order to allow for the fair distribution **of taxation based on the relation of one property's value to another**." (emphasis added by Ms. Young, Exhibit C4, page 17)

[264] There was extensive questioning concerning the ***Daishowa*** decision and why the assessors do not follow the Board direction, as interpreted by the Applicant, from that Board Order. Ms. Young interpreted the decision as being a site-specific decision, not based on an industry wide decline in economic conditions. As well, Ms. Young stated that the decision was based on the legislation and facts at the time of the decision and concurred that the application of Schedule D was based on being site specific, long term in nature and depreciation not covered in Schedule C. She also agreed that the decision was based on financial performance, but her position was that it was not based on a decline in general economic conditions. Further, that economic conditions are not to be considered as per the Directive. She indicated the Department held this position at the time of the ***Daishowa*** decision.

Response to Kent McPherson Report (Exhibit C7)

[265] The Kent McPherson Report confirms that Alberta considers depreciation on a different basis for non-regulated assets compared to regulated assets. Notwithstanding this acknowledgement, Ms. Young states that the Kent McPherson Report relies on standard appraisal techniques, which are more related to market value considerations.

[266] The Kent McPherson Report also refers to replacement cost new, or reproduction cost new instead of using the CCRG specifications. She opined that where these rates are used, they are closest to replacement cost new, and where actual costs are used, they are closest to reproduction costs new. However, she continued that Schedule A base costs differ from replacement cost new or reproduction cost new as certain costs are excluded by the CCRG.

[267] The Kent McPherson Report relies on poor economic conditions as a reason for considering Schedule D depreciation. Ms. Young testified that pursuant to the Directive this cannot be considered as it is a general economic condition. She further stated that regulated assessments are not decreased in economic downturns and are not increased in upturns.

[268] The Kent McPherson Report relies on the actual production levels from three (3) gas plants. Ms. Young testified that the provincial assessor must value all energy sector plants in Alberta, and where appropriate the provincial assessor reviews data from similar plants to determine what is typical or average, to ensure equity amongst assessments of similar property. The Kent McPherson Report relies on actual throughput against licensed capacity, which creates a curve for the properties studied, but it does not demonstrate what is typical for similar properties. As well, production levels are not a consideration in the regulated assessment of M&E.

Response to the DMA Report (Exhibit C4)

[269] The DMA Report relies on poor economic conditions as a reason for considering Schedule D depreciation. Ms. Young stated that additional depreciation for this purpose is not considered, as other tax policies (CCRG excluded costs, truncated depreciation curve, 77% statutory level, and no education taxes) mitigate not considering general economic conditions.

[270] The DMA Report relies on definitions and tables from the 1984 Manual. Ms. Young noted that the 1984 Manual was deregulated in 1995. There was a purposeful legislated decision made in 1995 to move from the standard of the day to the new two standards – market value for buildings and structures and a regulated standard for M&E.

[271] Ms. Young also testified that the DMA Report makes a few incorrect assumptions. These include:

a. The Minister's Guidelines do not use cost as a proxy based on the principle of substitution;
b. DMA relies on market value concepts to request additional depreciation; and,
c. DMA relies on the Shallow Gas Tax Relief Initiative to demonstrate that additional depreciation is warranted on the properties under complaint.

[272] Ms. Young also responded to the portion of the DMA Report which discussed how equity is achieved in regulated property assessment. She asserted that this occurs by applying a similar process to the assessment of each M&E property. The assessors rely on MGA s.467(3), s.467(4) and 499(3).

Response to Deloitte Report (Exhibits C5.1 and 6.1)

[273] As with the other reports filed on behalf of the Applicant, the Deloitte Reports rely on general economic conditions as the basis for additional depreciation. Based on the Directive, this is not permissible.
Response to CNRL Report (Exhibit C3.1)

[274] The Applicant cited several general economic conditions as the rationale for requesting additional depreciation.

[275] The CNRL report states **"In other words, assessments, based on historic cost, do not bear any relationship to their actual value."** (emphasis added by Ms. Young, Exhibit C3.1, page 4) Ms. Young concurs with the CNRL Report statement and she further opines that the assessment is not market value, fair actual value, or any other value other than a regulated assessed value.

Conclusion

[276] Ms. Young provided the following conclusion (Exhibit R19, paras. 63-65)

> 63. Additional depreciation is not given for general economic conditions as other property tax policies (CCRG excluded costs, truncated depreciation curve, 77 percent statutory level, and zero education taxes) mitigate general economic conditions. Additional depreciation is given where acceptable evidence is provided, and acceptable evidence focuses on site specific issues. Additional depreciation can be measured by the difference

> between the actual production of the property, and the typical production. The amount of additional depreciation is not a one-to-one relationship but considers the amount of Schedule C depreciation, and the additional depreciation provided to other similar properties.
>
> 64. Therefore Schedule D depreciation is not given for the machinery and equipment under complaint.
> 65. However, in considering the information received from the complainant and the inspections conducted by delegate assessors and Municipal Affairs staff, a recommendation will be made regarding the assessment of some of the buildings under complaint. The buildings with Machinery & Equipment Functional Depreciation document (Appendix 3) outlines the process used to develop the recommendations. Other witnesses will speak to the implementation of this depreciation."

Dr. Edward Thompson Report (Thompson Report) – Edward Thompson

[277] The Parties agreed that Dr. Edward Thompson, Ph.D., DIC., P.Eng is qualified as a mechanical engineer, to provide expert evidence on the numerical analysis of production rates, numerical modelling, design parameters for gas plants, best practices for representative sampling, and the use of the engineer's six/tenth rule.

[278] The Report Dr. Thompson spoke to was Exhibit R-13.

[279] Dr. Thompson identified certain limiting elements of the report of the Kent McPherson Report (Exhibit C7) that he addressed:

a. Small sample size;
b. Impossible Mathematical Condition;
c. Decay in production flow rate as a measurement of value;
d. Comparison of real-time PFR to design capacity without accounting for natural reservoir decay;
e. The potential use of engineer's six/tenth rule in the estimate of a loss in value;
f. Omission of numerical models and calculations or detailed analysis;
g. A Particular Numerical Example; and
h. Marten Hills Plant data.

[280] In addition, the Parties agreed to consider Dr. Thompson's comments to the rebuttal reports of Kent McPherson Rebuttal Report (Exhibit C32) and CNRL Rebuttal Report (Exhibit C34). Essentially, this amounts to surrebuttal; however, the Parties agreed that it was appropriate to allow Dr. Thompson to comment on those reports at the same time as his testimony, thus allowing for the merit hearing to proceed expeditiously.

Small Sample Size

[281] It was Dr. Thompson's testimony that the Kent McPherson Report indicated there were 1,800 folios (2018TY) and 2,300 folios (2019TY) within 493 property complaints in the 2018TY and 1,129 in the

2019TY. Dr. Thompson also noted that the Kent McPherson Report advised that 32 properties were inspected.

[282] Dr. Thompson testified that notwithstanding that the Kent McPherson Report noted the inspection of 32 properties, information from three (3) gas plants was used to propose the adjustment to the assessments. The gas plants considered were Marten Hills, Dunvegan and Seiu Lake. The Marten Hills plant was subject to complaint in both years, while Dunvegan and Seiu Lake were only subject to complaint in the 2019TY.

[283] The Kent McPherson Report also identified the stratification of assets under complaint by property type, with eight (8) property types in the 2018TY and 14 property types in the 2019TY. Dr. Thompson noted that the Kent McPherson Report concluded the characteristics of the three (3) gas plants could be transferred to all other properties. Based on the folio numbers provided in the Kent McPherson Report, Dr. Thompson calculated the sample of three (3) properties represents 0.167% of the properties under complaint for the 2018TY and 0.13% for the 2019TY. Dr. Thompson's opinion was it would be the recommended practice to consider samples from each stratification, and that any strata with only one asset presents issues. He also considered that the sample size used was not sufficient for statistical extrapolation, and as a result renders the conclusions and results in the report as "fatal".

[284] Dr. Thompson further opined that there was no supporting documentation or analysis comparing production to capacity ratios, which is the basis on which the report recommended a global 60% reduction in assessments. It was Dr. Thompson's view that the three (3) gas plants were statistical outliers and the results, if applied, would result in a significant error.

[285] Dr. Thompson also testified that using one (1) gas plant per zone was illogical. He considered that no determination was provided to demonstrate how considering gas production ratios as the parameter, and then applying that ratio to other assets, is numerically valid.

[286] Dr. Thompson noted that caution should be taken when drawing results from insufficient sample sizes. He testified that a more representative sample size would be 10% of the properties. Dr. Thompson indicated that a 10% sample size would have required 50 of the 2018TY properties and 115 of the 2019TY properties, rather than using only the same three (3) properties for each year. Dr. Thompson also indicated that while the 10% sample size would be a rule of thumb, if the results when tested were not reliable then the sample size should be expanded until such time as the testing of the data confirms the accuracy of the data.

[287] Dr. Thompson also quoted from publications prepared by the International Association of Assessing Officers (IAAO) and the Appraisal Institute (USA) and concluded that both recommended expanded sampling to draw conclusions respecting assessment.

[288] Dr. Thompson also stated that a small sample size is potentially more susceptible to manipulation.

Impossible Mathematical Condition

[289] Dr. Thompson identified that the Kent McPherson Report has used the same three (3) properties for both years under complaint. Dr. Thompson opined that "it is impossible to use the same sample set for two different distributions" (Exhibit R13, para. 27).

[290] Dr. Thompson also testified that the sample is supposed to represent a miniature replica of the total group. With this small a sample, this is impossible. A sample of one (1) creates significant obstacles.

Comparison of Design Capacity to Actual Production Flow Rate

[291] Dr. Thompson suggests that the Kent McPherson Report has identified that the difference between the plant design capacity and the actual PFR is a measurement that can be applied to the value of the assets. Dr. Thompson's opinion is that the relationship between the two has not been demonstrated in the Kent McPherson Report, and accordingly he cannot test the opinion.

[292] He also states that the Marten Hills information is incorrect in that the report considered the plant design capacity based on its original approval of 4,029 DEC whereas the plant had been relicensed in May 2012 at 600 DEC. He argued the ratio should have been based on the latter. In using the lower denominator, the utilization rate increases substantially. Dr. Thompson noted that the Kent McPherson Report was silent on the plant relicensing issue, and the report should have explained why the approach used the original licensed capacity instead of the re-licensed DEC.

Typical Decay of Production Flow Rate

[293] Dr. Thompson has indicated that the Kent McPherson Report suggests that the ratio based on the PFR can be used to measure the loss in value of the properties (throughput). Dr. Thompson also indicated that this conclusion was derived from conversations with plant operators, and not based on a detailed analysis of production data. Dr. Thompson opined that no mathematical model has been presented in the Kent McPherson Report, and as a result it is impossible to apply a model to the other properties, where there may be different operational circumstances or physical characteristics.

[294] Dr. Thompson also testified that there was no definition within the report as to how the three (3) stratification levels (less than 50% and greater than 25%, between 10% to 25%, and less than 10%) were developed. Nor was there any explanation as to how the results from the three (3) gas plants can be applied to the assessment sub-components. There was no information on the design capacity for the plants, nor any PFR time profiles. After issuing the Kent McPherson Report, the Applicant provided time related PFR information; however, Dr. Thompson's opinion was that the information did not support the opinions drawn in the report.

[295] Dr. Thompson considered that there is normal decay in PFR's associated with aging reservoirs. His opinion is that as reservoirs age, production declines. He further opines that this notion is not contemplated in the Kent McPherson Report. He stated that "The concept of comparing the PFR of a 50-year-old facility

to that of a plate capacity estimated some 50 years ago is not good engineering practice." (Exhibit R13, para. 32)

[296] Dr. Thompson reviewed the time related PFR information provided by the Applicant and created graphs for each of the three (3) plants. The graphs included the production flow rates modelled against time. The data graphed included actual data from the gas plants (Exhibit R13, Appendix 2A) and compared it to the typical decay curve (Exhibit R13, pages 14, 15, 16). The typical decay curve was derived from the work of J.J. Arps as detailed in Exhibit R13, Appendix 2B. In questioning Dr. Thompson confirmed that the PFR is typically applied to reservoir depletion; however, he applied it to the gas plants. It was Dr. Thompson's opinion that the gas plants were operating as expected based on the typical decay in flow rates impacting a plant over time.

[297] Dr. Thompson also testified that while the Kent McPherson Report noted 32 properties were visited, there was no additional information other than the assessment rolls as to those properties, and therefore it was not possible to test any of the assumptions or opinions from the report.

The Engineer's Six/Tenth Rule

[298] Dr. Thompson noted that Mr. Beatty, when providing the Kent McPherson Report indicated that the concept of the engineer's six/tenth rule was abandoned, and as such he did not speak to this aspect of his report in detail.

[299] Dr. Thompson opined that he agrees with the verbal testimony of Mr. Beatty that the engineer's six/tenth rule is not appropriate for assessment calculations, and that there are better methods than the six/tenth rule to prepare assessments.

Omission of Numeric Models and Calculations

[300] Dr. Thompson's position is that the Kent McPherson Report alludes to formulae, calculations and numerical models relating to property value; however, the report does not provide any of those considerations and their proposed relationships. As such, Dr. Thompson considers the findings of the report to be "unfounded opinions".

[301] Dr. Thompson also testified that it was not possible to test those opinions, whereas calculations and numeric models would have allowed for testing.

A Particular Numeric Example

[302] The Kent McPherson Report relied on the review of three (3) gas plants to develop three (3) band widths. To measure the degree of accuracy of the assumptions, Dr. Thompson selected a fourth plant, the Gold Creek gas plant. Dr. Thompson was able to obtain the average values of the PFR for Gold Creek for 2018 (Exhibit R13, para. 68). He was also able to determine the design capacity of the plant. He determined that the utilization rate for 2018 was 77%, which did not fit within any of the three (3) band widths identified in the Kent McPherson Report. There was also seasonal maintenance which occurred in July 2018 which, if accounted for, would increase the rate to 81%. The 2017 utilization factor was calculated to be 62% and it also did not fit within the bandwidths developed by Mr. Beatty.

[303] In the rebuttal testimony of Mr. Beatty and Mr. Pole, both confirmed that Gold Creek and its associated assets was being withdrawn from the complaint (as was the Progress gas plant and associated assets). Mr. Beatty and Mr. Pole confirmed that Gold Creek was an anomaly and should not be included. Dr. Thompson noted this confirms a more fulsome review of the assets should be considered to determine what additional outliers may be in the group of assets.

Marten Hills Plant

[304] The Marten Hills gas plant was one of the three (3) gas plants reviewed by Kent McPherson. It was the only gas plant from Zone B. It was stated within the report that the utilization rate was approximately 7%. Dr. Thompson notes that the calculation of the utilization rate was based on its original licensing of 4,029 DEC; however, the plant license was reduced to 600 DEC in May 2012. Based on the lower licensing, Dr. Thompson calculated that the facility operated at approximately 55% capacity in 2018.

[305] It was Dr. Thompson's opinion that based on the foregoing, the property is unique and an outlier and should not have been used in the report.

Rebuttal of Kent McPherson Rebuttal Report (Exhibit C32)

[306] In answer to Dr. Thompson's position that the sample size was too small, Mr. Beatty stated the objective in selecting three (3) plants as samples was "…to illustrate the broad based functional and economic circumstances affecting the assets under appeal." (Exhibit C32, page 10) In further response to Mr. Beatty, Dr. Thompson commented that while Mr. Beatty may disagree with the sample size concerns, Mr. Beatty has also deviated from standard appraisal practice by limiting the sample size.

[307] Mr. Beatty also claims that he applied "valuation principles" and did not consider statistical modelling. Dr. Thompson's position was that the IAAO and Appraisal Institute advocates statistical modelling for appraisers and that Dr. Thompson's opinion is not an independent concept.

[308] Mr. Beatty also suggests that after the preparation of his report he was provided production figures for the properties under complaint at the plant level and these confirmed Mr. Beatty's observations. Dr. Thompson noted that while Mr. Beatty may have the information, it was not provided to the Respondent and Dr. Thompson was unable to corroborate the information.

Rebuttal of CNRL Rebuttal Report (Exhibit C34)

[309] Mr. Pole noted that Gold Creek is a property with unique characteristics. Dr. Thompson concurred and noted this supports his contention that the sample size should be expanded.

[310] Dr. Thompson also referred to the chart included in the CNRL Rebuttal (Exhibit C34, page 6), and his observation was that the graph generally uses a stratification approach and a reduced value for the 2018TY of 36% in Zone A and 44% in Zone B. For the 2019TY the calculation was 46% for Zone A, 29% for Zone B and 53% for Zone C. Dr. Thompson commented that this calculation confirms that the Kent McPherson Report, which suggested a blanket reduction of 60%, is not reliable and should not be considered. However, Dr. Thompson also questioned the appropriateness of using the assessed value

multiplied by a utilization factor to determine the revised assessment. Dr. Thompson noted that there is no supporting documentation provided to allow for testing of any of Mr. Pole's assertions.

Conclusions

[311] Dr. Thompson testified that the Kent McPherson Report was issued based on the following premise:

> This report is subject to an assumption that the assets viewed as part of the assignment are a representative sample of the folios that are under appeal. (Exhibit C7, page 6)

[312] Dr. Thompson's opinion is that a sample size of three (3) is not sufficient for statistical significance. The limited sample size would result in significant bias to the characteristics of the three (3) properties. Accordingly, Dr. Thompson finds this to be a fatal error and renders the report meaningless. Further, the sample size is questionable in that the sample represents one (1) property from each zone. Dr. Thompson finds this to be a "violation of mathematical and statistical methods and for that matter common sense."

[313] The assumption the Kent McPherson Report relies on has not been justified in the report, nor is there any verification that the properties selected were representative. In addition, the gas plants would be subject to normal ageing decay, and Kent McPherson has not taken that into consideration. This is also considered to be a fatal error.

[314] Dr. Thompson also opined that the qualities of a good sample include it being random. That would require each item in a sample having an equal opportunity of being selected. The properties were selected by CNRL and there is no evidence on the criteria for selection. As well, the sample size proposed by Dr. Thompson was 10%. The sample of three (3) properties is inadequate and fatal.

[315] The only parameter considered within the Kent McPherson Report is the PFR. This is not sufficient for statistical testing and on its own is meaningless.

[316] The Kent McPherson report is absent any models which could be tested. The information summarized in the Kent McPherson Report is that a standard reduction of 60% could be considered; however, how this was arrived at, or the measurements of the results are not shown, rendering the report fatal.

[317] The Kent McPherson Report states that the three (3) sample plants are representative of the production levels for various fields. This assumption is neither measured nor verified. Dr. Thompson states "…the appraiser is applying unknowns in the sample of three properties to the unknowns in the whole population. These are meaningless statements." Dr. Thompson opines that without a comparative analysis of the three (3) gas plants against the general population the assumption is not proven. Dr. Thompson also stated "Mr. Beatty should have provided an insight into the location of the characteristics of the three individual plants on the variation distribution of the general population. This has not been undertaken and therefore all resultant opinions are unknown."

Kingston Ross Pasnak Report – Randy Popik

[318] The Parties agreed that Mr. Randy Popik, B.Comm, CPA, CA, CBV, ASA, CFI, CFF is qualified as a chartered business valuator, to provide expert evidence on business valuations.

[319] The Report Mr. Popik spoke to was Exhibit R-17.

[320] Mr. Popik advised his scope of work was to provide a limited critique of the Deloitte LLP Reports (Exhibits C5.1 and C6.1). His engagement did not include providing a conclusion as to the value of the assets. He advised that he was instructed by the Respondent's legal Counsel that the assessment of Designated Industrial Property is a regulated calculation and that it was not necessary for him to provide a market value conclusion.

[321] It was Mr. Popik's testimony that he had no issues with the mathematical calculations presented by Deloitte. His limited critique of the report was primarily related to the following matters:

a. The duration of the forecast (50 years) and the inherent uncertainties with such a lengthy duration;
b. The lack of supporting information;
c. The low level of assurance related to the level of valuation; and
d. The lack of historical information.

[322] Mr. Popik noted that the Applicant's Annual Report included a statement that forward-looking statements are not a guarantee of future financial performance; however, the Deloitte Report did not echo this disclaimer.

[323] Mr. Popik also stated that based on his critique of Deloitte's work, the Deloitte Report was merely "numbers on paper".

[324] Mr. Popik provided further comments on his limited critique.

Duration of the Forecast

[325] Mr. Popik opined that energy market projections are inherently uncertain. He provided examples of historical information for events of the past 50 years such as the Toronto Stock Exchange closing prices (from 1977 onward), the average Canadian prime lending rate, and advances in technology. He also notes that Sproule Engineering, who prepared the reserve reports notes that there is a high degree of uncertainty in forecasting energy prices and revisions could be considerable. Mr. Popik stated that the greater the forecast period, the greater the risk of non-realization of the future cash flow.

Lack of Supporting Information

[326] Mr. Popik also testified that he requested copies of the information that Deloitte relied upon to prepare its report, from Counsel for the Respondent. In questioning it was not clear whether that request was ever advanced to the Applicant. Mr. Popik's position was that unless he was able to review the information, he was unable to express an opinion as to the veracity of the Deloitte Report.

Lowest Level of Assurance

[327] Mr. Popik testified that there are three (3) levels of available valuation reports considered by the Canadian Institute of Chartered Business Valuators (CICBV). These included a Comprehensive Valuation, an Estimate Valuation, and a Calculation Valuation. In terms of level of assurance, the Comprehensive Valuation is the highest level of assurance and the Calculation Valuation is the lowest level. The Deloitte Report was a Calculation Valuation. Furthermore, the Deloitte Report specifically states, "The valuation conclusions expressed in this report might be different than if we prepared a Comprehensive Valuation Report or an Estimate Valuation Report".

[328] Mr. Popik provided a comparison of the information recommended to be reviewed under each type of report (Exhibit R17, para. 8.22).

[329] Mr. Popik indicated that the Deloitte Report clearly states that "Except as expressly described herein, we have not attempted to verify independently the completeness, accuracy, or fair presentation of the Information". Mr. Popik noted that this was clearly represented by Deloitte; however, the Board should be aware that there has been no assurance of the verification of the accuracy of the information.

[330] Mr. Popik also testified that the CICBV recommends that where the report may be used for contentious matters, the valuator may wish to consider whether the level of the report is suitable for the matter being considered.

Lack of Historical Information

[331] It was Mr. Popik's position that unless there was some historical context to the information being provided, it would be difficult to determine whether the financial forecasts were reasonable.

Other Comments

[332] Mr. Popik testified that he was advised by the Respondent's Counsel that the calculation of linear assessments is based on a regulated regime. It is not market value. The Deloitte Report identifies a major assumption that the linear assessment is assumed to be market value. When Deloitte considers the residual value attributed to each Zone, it does so by deducting the linear assessed value from the preliminary valuation. As it is not market value, the entire Deloitte Report should be reviewed for its relevance.

[333] Within the Deloitte forecast, the only calculation Mr. Popik questioned was the Weighted Average Cost of Capital (WACC) (discount rate). Mr. Popik indicated that the Deloitte calculation was not incorrect; however, he noted that there were questions as to how Deloitte used its "professional judgement" to calculate the WACC rate. Mr. Popik provided a chart to demonstrate the inverse relationship between WACC and the Discounted Cash Flow (Exhibit R17, para. 8.14). Mr. Popik noted that a 0.5% decrease in the WACC, all else being equal, would increase the discounted cash flow calculation by approximately 3.5%.

[334] Mr. Popik also noted that in support of his observation on the inherent risk of oil and gas forecasts, he compared selected data from the Deloitte Report (Exhibits 5.1 and 6.1). The comparison was between

the July 1, 2017 report values and the July 1, 2018 report values. Mr. Popik noted significant variations between the values for similar years between the 2017 and 2018 values (Exhibit R17, Schedule 1).

Conclusion

[335] Mr. Popik concluded that "The Deloitte calculations, in and of themselves, do not provide the necessary historical context, assurance, nor supporting evidence/assumptions to be more than simply "Numbers on Paper" (i.e., Math)." (Exhibit R17, para 8.32)

Shaske & Zeiner Appraisal Consultants Ltd (Zeiner Report) – Kevin Zeiner

[336] Mr. Kevin Zeiner, AACI, P.App, is the managing partner of Shaske & Zeiner Appraisal Consultants Ltd. Mr. Zeiner has his Accredited Appraiser Canadian Institute (AACI) and Professional Appraiser (P.App) designations from the Appraisal Institute of Canada. Mr. Zeiner is qualified to provide expert evidence on market value appraisals for buildings and structures. After questioning it was agreed that Mr. Zeiner's testimony would relate only to buildings and structures.
[337] The Report Mr. Zeiner spoke to is Exhibit R15.

[338] In questioning, Mr. Zeiner was asked whether his report disagreed with the joint recommendation respecting buildings and structures made by the Parties. Mr. Zeiner testified that he was not involved in the preparation of the joint recommendation; however, he stood by the comments in his report.

[339] Under further questioning, Mr. Zeiner was asked whether he was aware that in the 2019TY, 479 of 1,129 buildings and structures properties were noted where the M&E was 100% idled (blinded) and that was the basis for the joint recommendation. Mr. Zeiner advised that he was not aware of the number of facilities subject to the joint recommendation.

[340] Mr. Zeiner confirmed that his report does not provide a valuation conclusion, but rather, that his report was prepared in response to the Kent McPherson Report and was issued prior to the joint recommendation being made.

Application of a Model

[341] Mr. Zeiner spoke to the Kent McPherson Report and specifically to the use of a single formula to apply to many properties. It was Mr. Zeiner's opinion that considering the reported number of properties, and the reported varied types of properties, it was inappropriate to consider only three (3) gas plants and to use their production levels to determine three (3) tiers of additional depreciation, and then to apply the findings to all building and structure and M&E assessments equally.

[342] Mr. Zeiner opined that notwithstanding that the gas plants are the largest in size and highest valued properties, each property type is unique; by not looking at different property types, there was no consideration of the physical and operational differences that exist between them. He advocated the key consideration should be whether any asset was functioning according to its intended purpose. He further stated that depreciation for a gas plant may be different than a well site, booster station, compressor station, or other types of assets.

[343] It was Mr. Zeiner's testimony that he expected a considerably more complex model. First, there is a need to separate the various type of properties. Further, there is a need to consider location, purpose, production level, and perhaps several other factors, to determine appropriate rates of additional depreciation, if any, for each type of property.

Application of Obsolescence

[344] Mr. Zeiner discussed the application of obsolescence. Under questioning by the Board, he confirmed he did not provide definitions of obsolescence; however, he adopted the definitions provided in the Kent McPherson Report.

[345] It was Mr. Zeiner's testimony that the Kent McPherson Report combined functional depreciation and external depreciation, and that the two aspects should be separated. Rather than one numeric calculation, from a mathematical perspective functional depreciation should be applied first on a site-specific basis, then followed by an adjustment for external depreciation. If this were not done, the mathematical consideration of a sum of two aspects would be incorrect.

[346] In questioning, Mr. Zeiner was asked to clarify his understanding of functional obsolescence. Mr. Zeiner testified that functional obsolescence is based on what a property's value might be when compared to a similar property that exhibited different characteristics and impacts. There would be a review of properties that may have traded, to determine what the obsolescence might be. This would be more typical in the valuation of commercial properties and not special purpose properties.

[347] Mr. Zeiner further commented that the application of external obsolescence may be warranted; however, including a broad range of properties may incorrectly apply depreciation to many buildings and structures which may be unwarranted.

[348] Mr. Zeiner also commented that using only three (3) properties is a very narrow statistical range. As well, he opined there is no analysis or other information to determine why three (3) levels were determined. There is no market evidence or mathematical calculations of any sort to derive the findings. The application of a blanket level of obsolescence may be correct for the gas plants but it is not certain why it would be applied to other property types. The findings appear to be an opinion of what the number should be.

Rebuttal to the Kent McPherson Rebuttal Report (Exhibit C32)

[349] The Kent McPherson Rebuttal Report states "There is no requirement to differentiate whether the source is functional or economic, as the use of a replacement asset is all encompassing." (Exhibit C32, page 15) Mr. Zeiner testified that he was not aware of any appraisal teachings that support Mr. Beatty's approach. Mr. Zeiner's opinion is that the distinction does matter, as the granting of obsolescence is dependent on both the type of obsolescence and whether the assessment is completed under a market value standard or regulated standard.

Conclusion

[350] Mr. Zeiner's opinion is that obsolescence should not be applied on the basis determined in the Kent McPherson Report.

SUMMARY OF RESPONDENT'S POSITION

Introduction

[351] The Respondent's position is that the issues for the Board to decide are:

a. what types of additional depreciation can be granted under Schedule D of the M&E Minister's Guidelines; and
b. what the criteria are for Schedule D depreciation. That is, if additional depreciation can be considered, what is the evidence necessary to support a Schedule D claim?

[352] The Respondent testified that the Applicant's argument is intended to persuade the Board that the legislation should be interpreted differently than that which was intended. This would require a policy change, which should not be before the Board. The Applicant's concerns should be dealt with through legislative changes.

[353] The Respondent confirmed that the Provincial Assessor had inspected certain properties regarding buildings and structures, and as a result has developed a proposed approach to address functional depreciation. This would be applied to certain buildings and structures in 2018TY and 2019TY and could form the basis going forward for the balance of structures if the joint recommendation of the Parties is accepted by the Board (Exhibit R46).

Confidentiality

[354] The Respondent agreed that certain of the financial information provided to the Board is confidential in nature. The Respondent was amenable to a form of Confidentiality Agreement and a joint recommendation has been submitted to the Board for the form of a Confidentiality Agreement (Exhibit C43).

Economics

[355] The Respondent did not provide any testimony to argue with CNRL's position that the price of natural gas is depressed, nor was there any disagreement with the economic conditions cited in the CNRL Report. The Respondent emphasized these economic conditions affected all gas producers, not just the Applicant.

Valuation Standard

[356] In 2018, the MGA was amended to create a group within the Assessor's Office to conduct the assessment of designated industrial property defined in s.284(1)(f.01). Both Parties agree that the property under complaint is designated industrial property.

[357] The Parties also agreed that the valuation standard is set by MRAT and MRAT 2018. For buildings and structures the standard is market value and for designated industrial property the standard is regulated assessment.

[358] For buildings and structures the MRAT assessment process applied in the 2018TY was market value. For the 2019TY the MRAT 2018 standard was amended slightly to using the Valuation Guide for Special Purpose Properties. There was no change to the assessment process for M&E from the 2018TY to the 2019TY.

[359] Both parties agreed that the most recent legislative changes which occurred resulted in different assessment processes for buildings and structures than for M&E; however, the contents of the legislation were relatively unchanged. The comparison of legislation considered in this action was noted in the Summary of the Applicant's Position and agreed to by both Parties.

[360] The Respondent noted that while the Parties agree on the valuation standards, the Applicant incorrectly argued that the market value principles that apply to buildings and structures should also apply to M&E assessment. The Respondent's position was that the legislation must be interpreted contextually ***(Vavilov v. Canada (Minister of Citizenship and Immigration), 2019 SCC 6, para. 117-118*** (Vavilov) (see also below), and the only reasonable interpretation is that assessment principles applicable to one valuation standard (market value) cannot be applied to another valuation standard (regulated assessment).

Schedule D

[361] The Respondent testified that the Applicant's interpretation is that Schedule D provides a broad scope, as well as an obligation to apply additional depreciation for any factor which could affect the marketability of M&E. This could include a lack of sufficient pipeline capacity, a general economic downturn or fluctuation in commodity prices. As well, the Applicant's position is that current legislation cannot be divorced from market value. The Respondent testified this position is inconsistent with the context of the Minister's Guidelines and is not harmonious with government policy objectives. This concept may have been applicable in prior versions of the legislation; however, the prior legislation was repealed in 1995. Schedule D must be interpreted such that the market value standard does not apply to M&E and the assessor has an obligation to follow the legally regulated framework. As well, the economic conditions observed by the Applicant would be known to the Minister annually and most recently when the 2018 Minister's Guidelines were reviewed and passed.

[362] The Respondent also testified that the Applicant stated that the definition of depreciation found in the 1984 Assessment Manual suggests that any form of depreciation can be applied under Schedule D. The Respondent disagreed with that concept. In the explanatory section of the 1984 Manual, the Respondent noted that when describing the age life tables for M&E, additional depreciation beyond the amounts set in the depreciation table can only be granted for abnormal, site-specific depreciation not captured in the depreciation tables. The purpose of regulated assessment is to provide a higher level of certainty for M&E assessments for ratepayers and municipalities, as well as for a consistent model across the province by removing assessor's discretion and applying prescribed rules. Schedule D must be interpreted considering the regulated regime and not market value. Market value assessments are intended to consider changing economic circumstances whereas regulated assessments are not. As such, the broad definition cited by the Complainant is not applicable to determining when additional depreciation may be granted. (Exhibit R10, Tab 12, sections 1.200.070 and 1.200.110)

[363] The Respondent considered it illogical to allow assessors the discretion to import market value concepts to the interpretation of Schedule D. None of the other Schedules (A, B, C, or the statutory level) suggest connection to the property's market value, and as such there should be no introduction of market value concepts into Schedule D.

[364] The Respondent also noted that the reason for Schedule D consideration limits its scope to apply additional depreciation "not reflected in Schedule C." Schedule C estimates the age life of different types of M&E and assigns a depreciation schedule.

[365] It is the Respondent's position that the November 2018 Directive is explicit in requiring that any application of Schedule D be based on site-specific circumstances, and specifically excludes general economic conditions. As well, forms of depreciation that are reasonably foreseeable are already included in Schedule C, and that would include fluctuations in commodity prices and the business cycle highs and lows.

[366] The Respondent opined that contrary to Mr. Beatty's testimony, separating the amounts of functional obsolescence and economic obsolescence is necessary. If Schedule C depreciation considers normal physical and normal functional obsolescence, then Schedule D cannot duplicate that consideration. It was confirmed in ***Amoco/Greenview*** and ***BP/Greenview*** that Schedule C is simply applied to the base cost based on the appropriate age life set out in the Minister's Guidelines.

[367] The Respondent also spoke to the concept of idled M&E. A consideration of idled, sometimes referred to as "blinded" equipment, is found within the ***BP/Woodlands*** Board Order, which considered MRAT (1(j)) and MRAT 2018 (2)(1)(g)) definitions of machinery, which are identical. The definition is:

> machinery and equipment" means materials, devices, fittings, installations, appliances, apparatus and tanks, other than tanks used exclusively for storage, including supporting foundations, footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in…

[368] The ***BP/Woodlands*** Board Order described questions that would be relevant to whether an item qualifies as M&E. Those questions would be:

a. Is the item an integral part of the unit?
b. If so, is that unit operational?
c. If so, is the operational unit used or intended for processing, manufacturing, etc? (Exhibit R9, Tab 4, page 73)

[369] In applying what that Board found, if the answer to all the foregoing is affirmative, then the property is M&E. If the answer is not, then it is idled, or blinded M&E.

[370] The Respondent agreed with that Board's definition of idling or blinding. The Applicant noted that certain of its M&E is not operating. The Respondent's position was that if that equipment meets the test of being idled, or blinded, then the Applicant should plan with the Provincial Assessor to have that equipment identified and the assessment amended to zero. This would require the Provincial Assessor to attend the

property to confirm the operational status of the equipment; however, that is not a reason for additional Schedule D depreciation. It can be dealt with by identifying it as blinded. This was confirmed in

Amoco/Greenview and ***BP/Woodlands***.

[371] The Respondent's position was that blinding of assets confirms that assessment needs to be conducted on a site-specific basis.

[372] The Respondent noted that the DMA Report, as well as testimony of Mr. Pierson, identified that Schedule D additional depreciation has been granted by assessors on other files. In questioning, Mr. Pierson confirmed that he had not filed any evidence to support this statement.

Legal Decisions and Precedent Related to Schedule D Application

[373] The Respondent cited that ***Progress Energy Ltd. v. Alberta (Designated Linear Assessor), MGB Decision No. 133/03*** (Progress) confirmed that equity and fairness is achieved where the assessor applies the formulae and methodology in a prescribed manner. Where that calculation results in a value that is higher than market value, equity and fairness have still been achieved (Exhibit R9, Tab 5, pages 16-17).

[374] In ***GT Telecom***, the Board confirmed that the Board has no jurisdiction to adjudicate fairness, and that the Board is limited to determining whether the assessor followed the prescribed procedure correctly (Exhibit R9, Tab 6, pages 16-17).

[375] ***Progress*** and ***GT Telecom*** confirmed that the approach to regulated assessment is to apply the prescribed procedure. This differs from market value assessment where fairness and equity are achieved using mass appraisal techniques, including sales comparisons, or actual construction costs to determine construction cost new. Assessments based on the market value standard are different than regulated assessments.

[376] The Respondent's position was that the equity principles have been codified in the MGA under s.467(3), s.467(4) and 499(3). s.467(3) relates to buildings and structures assessment while the latter two provisions are about regulated assessment. The latter confirmed that Assessment Review Boards and the MGB should not alter assessments of regulated property, including M&E, if those assessments have been prepared in accordance with the regulated valuation standards.

[377] The Respondent testified that the application of Schedule C was discussed in ***BP/Woodland***. In that decision, the Board confirmed that Schedule C is intended to cover "minimum depreciation, which would include depreciation that is reasonably foreseeable or expected given the nature of the machinery and equipment in question." That Board also confirmed that Schedule D is intended to cover site-specific abnormal physical depreciation, abnormal functional depreciation, and economic obsolescence that would not be foreseeable given the nature of the machinery and equipment. The Board found that "[i]f an event or circumstance is to be expected based on the nature of the M&E and its normal context and function, then any resulting loss is contemplated by the scheme set out in Schedule C." (Exhibit R9, Tab 4, pages 23-25 and 26-27)

[378] The Respondent submitted that the assessor has considered Schedule D depreciation, and that its view is that Schedule D can only be applied for unexpected, site-specific situations which shorten the age life of the M&E.

[379] The Respondent spoke to certain relevant decisions.

[380] In ***Amoco/Greenview,*** the issues included PFR, natural decline of reserves and capacity. That Board cited:

> In order for the Board to recognize functional and/or economic obsolescence it must be proven that the property (improvement) in this case a "gas plant" is suffering from a situation not normally associated with the normal condition or operation of similar or like improvements. In terms of gas plants, the Board recognizes that typically gas plants operate in an ever changing operations environment and adaptation to changes is normal. (Exhibit R9, Tab 7, page 35)

[381] In ***BP/Woodland*** that Board dealt with application of the regulated scheme and rejected the argument that Schedule D was warranted. This rejection was on the basis that Schedule C does not represent "a serious attempt to replicate market value". It found that Schedule C represents "a unique arrangement designed for efficient calculation of acceptable assessment values loosely based on a mixture of accounting and appraisal principles in light of strong policy considerations." That Board also found that comparing market value against the regulated value was not sufficient to warrant Schedule D additional depreciation. (Exhibit R9, Tab 4, page 26)

[382] ***BP/Woodland*** concluded:

> The MGB is convinced that acceptable evidence of a loss in value to show additional depreciation should be seen in the light of depreciation already granted through Schedule C's methodical distribution of included costs over an asset's anticipated useful life. Any event or circumstance that would shorten the anticipated useful life of the asset or otherwise require an unanticipated adjustment to Schedule C's allocation scheme may qualify as acceptable evidence of loss. If the event is to be expected based on the nature of the M&E and its normal context and function, then the kind of loss resulting from it is already contemplated by the scheme set out in Schedule C. On the other hand, if the event or its negative impact is unusual or unexpected, then adjusting the allocation scheme set out under Schedule C may be justified. In short, **the MBG finds that acceptable evidence of a loss in value for the purposes of Schedule D must involve permanent and unexpected negative impact on the utility, productivity, economic viability or useful life of the asset in question.** (emphasis added by Applicant - Exhibit R8, page 29 and Exhibit R9, Tab 4, pages 26-27)

[383] In ***BP/Greenview*** the issues were the valuation standard, PFR, and sulphur market pricing. The Board found that the valuation standard for M&E is intended to, in part, allocate depreciation in a rational, predictable, and consistent fashion. This contrasts with market value assessment which attempts to estimate the fee simple value of a property in any given year. Like ***BP/Woodland***, ***BP/Greenview*** found:

> For the purposes of Schedule D depreciation, **the MGB finds that suitable evidence of a loss in value must show a permanent and unexpected loss in value of any kind that would support a new scheme to allocate value over the asset's remaining life.** (emphasis added by Applicant – Exhibit R8, page 30 and Exhibit R9, Tab 8, page 33)

[384] The Respondent noted that the Applicant relies heavily on the ***Daishowa*** decision. It was the Respondent's position that ***Daishowa*** is an outlier which departs from the consistent interpretation and the Board's conclusion in ***Amoco/Greenview***, ***BP/Woodland*** and ***BP/Greenview***. In ***Daishowa***, the MGB found that a "catastrophic event, or an event that shortens the life of a facility are not the only criteria to be considered" for determining whether additional Schedule D depreciation should be considered. It was the Respondent's position that the principles triggered in ***Vavilov*** in respect of application of the modern method of interpretation were not met in ***Daishowa***. Instead, that Board found that a broader group of criteria, including physical and economic criteria, can be considered if the evidence shows additional loss in value. (Exhibit R9, Tab 9, paras. 59-60)

[385] The Respondent's consideration on ***Daishowa*** was that the Board interpreted Schedule D in a vacuum, in finding that "the wording of section 5.000 of the Minister's Guidelines is very broad in scope." The Respondent testified that the Board did not undertake an analysis of what forms of depreciation were already accounted for in Schedule C, or whether forms of depreciation relevant to market value can be applied in a regulated assessment context. The Respondent testified the Minister's Guidelines, including Schedule D, is intended to provide a fixed, predictable, and consistent method to determine M&E assessed value.

[386] The Respondent's position is that ***Daishowa*** conflicts with the earlier Board decisions of ***Amoco/Greenview***, ***BP/Woodlands*** and ***BP/Greenview*** and the ***Daishowa*** Board's interpretation of Schedule D should be rejected, and the earlier decisions relied upon. There was no explanation in Daishowa that the Board had considered the decisions in ***Amoco/Greenview***, ***BP/Woodlands,*** and ***BP/Greenview***, and if the Board had considered them why it rejected the conclusions of those Boards. The Respondent also argued that the MGB's reasoning in ***Amoco/Greenview***, ***BP/Woodlands*** and ***BP/Greenview*** are more consistent with the Supreme Courts expectation of tribunal reasons in ***Vavilov***.

[387] As well, the Respondent testified that at the time of the ***Daishowa*** decision, the legislation did not include the codification of fairness and equity. Now that they have been codified, they provide a much clearer view of the requirements.

[388] The Respondent also spoke to the relevancy of certain decisions relied upon by the Applicant.

[389] In ***Shell Canada,*** the parties to the proceedings agreed that there was no standard or methods of assessment prescribed to assess the plant. The valuation standard was determined by the Court to be fair actual value. Because the Court determined the fair actual value standard, that standard has no bearing on the valuation standard under the current legislation. Accordingly, the ***Shell Canada*** decision is irrelevant.

[390] The ***Unocal*** decision, like the ***Shell Canada*** decision concerned fair actual value and is also not relevant.

[391] The ***Pearce*** decision was based on fair actual value and is also irrelevant.

[392] The ***T. Eaton*** decision was based on a statutory framework that is fundamentally different than what applies today, and considered only the assessment of land and buildings and not M&E. The Applicant's comments concern legislation that is no longer in force, has been substantially amended since 1987, and is not relevant in determining the proper application of Schedule D.

[393] ***Lougheed*** was another case that did not consider M&E. The decision concerned the application of transitional provisions which allowed municipalities to either apply the old Municipal Taxation Act for a period of time, or to adopt the new provisions in the MGA. Assessments under the former were based on a fair actual value standard whereas the latter prescribed a market value standard for some types of properties. The Respondent testified this was irrelevant to this action, as the Court's statement referred to in the Applicant's brief does not apply to the regulated assessment of property. The Respondent concurred that ***Lougheed*** concluded that taxpayers are entitled to assessments which are equitable and correct. The Respondent maintained that although M&E is not assessed based on market value, the framework prescribed in the Minister's Guidelines remains fair and equitable.

[394] The Respondent also noted that the Applicant referred to many other irrelevant decisions from other provinces and jurisdictions. Alberta's assessment of M&E is a unique statutory framework not found elsewhere in Canada. This renders decisions from other jurisdictions as not being helpful.

Legislative Intent

[395] The Respondent stated that the Applicant's position is that the history of the legislation can inform as to the context and objectives of the newer legislation. The Respondent argued that the Applicant would prefer that the legislation not evolve, but to interpret the current legislation using prior legislated definitions.

[396] The Respondent maintained that the "modern method" of interpreting legislation is from the Supreme Court ***Re Rizzo & Rizzo Shoes, [1998] 1 SCR 27*** (Rizzo) at paras 20-21 (Exhibit R9, Tab 1):

> The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the adopt interpretations of individual statutory sections that promoted the proper operation of other sections within the same statute. Context can also include other related statues that help to inform the interpretation of the section being examined.

[397] The Respondent also argued that ***Sullivan*** suggests the "purpose" of the legislation relates to the "object of the Act" and the "intention of Parliament". This is expanded upon at ***Sullivan***, page 259. It is necessary to ask why a particular section has been included in the Act and how that section helps to promote the Legislature's objectives. ***Sullivan*** also suggests that if one interpretation promotes the objective better than another, then the better interpretation should be preferred (***Sullivan***, page 268).

[398] The Respondent maintained that two methods are generally considered for determining the legislative intent. The first is reliance on direct evidence. The other is indirect evidence such as inferences from the legislation itself which may also include a review of the historical versions of the same legislation (**Sullivan**, pages 274-275).

[399] The Respondent also noted that more recently, the Supreme Court confirmed that administrative decision makers are required to interpret statutory sections contextually and purposively. (***Vavilov*** (Exhibit R9, Tab 3 at paras. 117-118))

[400] When interpreting Schedule D of the Minister's Guidelines, the Respondent's position is that the Board must consider the following:

a. The distinction between market value standards and regulated assessment contained within MRAT and MRAT 2018;
b. Concepts or definitions applicable to property assessed under the market value standard are not relevant to M&E, which is assessed on the regulated standard;
c. Schedule D must be considered in the context of other schedules of the Minister's Guideline. Schedule A "base cost" excludes certain construction costs, and a cost factor is applied to determine the base cost. Thus, certain costs have already been excluded from the M&E assessment;
d. Base cost in Schedule A does not represent the M&E reproduction cost or replacement cost new, which are market value concepts;
e. Schedule B is the application of a base cost modifier, and when applied the value does not represent market value. Furthermore, the assessor does not have the discretion to apply a different assessment year modifier to better reflect market conditions;
f. Schedule C adjusts the value based on the anticipated age life of the M&E;
g. Schedule C also accounts for foreseeable forms of depreciation;
h. Schedule C allows for an immediate 25% depreciation (75% remaining) on newly constructed/acquired M&E;
i. Schedule C also has a floor depreciation of 60% (40% remaining);
j. The assessor has no ability to depart from the prescribed factors in Schedule C;
k. Schedule D intentionally constrains the assessor discretion to ensure equity and fairness in preparing M&E assessments;
l. Equity in M&E assessment is achieved by application of the MGA s. 467(4) and s.499(3);
m. The statutory factor of 77% is applied based on MRAT and MRAT 2018; and
n. Schedule D application should consider that there is no education tax applied to M&E.

[401] The Respondent stated that the intent of the legislation is to remove the assessor's discretion. Schedules A, B, C, and the statutory deduction are prescriptive and intentionally do not reflect anything resembling market value. Equity and fairness are achieved with consistent application of the prescribed formula.

[402] The Respondent agrees that the age life tables in Schedule C of the Minister's Guidelines are based on similar tables found in the 1984 Manual. The 1984 Manual states that the age life tables for M&E do not reflect market value and instead reflect a "declining balance premise of depreciation" that is heavily influenced by provincial tax policy. The 1984 Manual stated:

> The depreciation of machinery and equipment is, in large measure, influenced by provincial government taxation policies. The standard remaining life tables for machinery and equipment (1.200.120) are based, essentially, on the declining balance premise of depreciation with the following major modifications:

1. An immediate depreciation allowance of 25% (75% remaining) is granted to all new machinery and equipment and the allowance remains at this level until the improvement attains an effective age that would have produced a 25% (75% remaining) allowance had the declining tables been applicable throughout the life of the improvement;
2. The declining balance tables are applicable with respect to determining subsequent depreciation allowances when the effective age of the improvement exceeds the age, at which 25% depreciation (75% remaining) is attained;
3. The declining balance tables continue to be applicable until the improvement attains an effective age that results in a depreciation allowance of 60% (40% remaining) on the declining balance tables. Depreciation is capped at this level and the allowance remains at 60% (40% remaining) so long as the improvement remains in service. (Exhibit R10, Tab 12, section 1.200.110)

[403] The 1984 Manual states that "abnormal depreciation is not reflected in the standard remaining life tables and may be a potential additional loss in value to the improvement". The Respondent acknowledges this direction; however, interprets this as only abnormal depreciation beyond what is accounted for in Schedule C. The 1984 Manual defines abnormal depreciation as:

> The loss in fair actual value over and above a loss attributable to deterioration and obsolescence as measured in the remaining life tables. **Abnormal depreciation is unique to a property and is the result of unexpected changes in the circumstances of the property**. (Emphasis added) (Exhibit R10, Tab 12, sections 1.200.110 and 1.200.130)

[404] The Respondent questioned whether the DMA Report, and its author Mr. Pierson, had considered the modern methodology of interpretation when the report was prepared. Mr. Pierson stated that he had not.

Methodology

[405] The Parties agreed on the methodology the legislation stipulates for regulated assessment.

[406] The Parties disagreed on whether Schedule D additional depreciation should be considered; and if it should be considered, the basis upon which it is to be considered and the required level of evidence to prove such a loss has occurred.

[407] The Respondent disagreed with the concept of the "funnel theory" depicted in the Kent McPherson Report. The Respondent accepted the flow theory; however, not that it supported that all property types be treated the same.

[408] The Respondent's position was that the Kent McPherson Report is based on the replacement asset theory, which is a market value principle. The correct assessment should be based on the regulated assessment scheme.

[409] The model developed in the Kent McPherson report is based on production to capacity. It was based on PFR from three (3) gas plants observed and the PFR data from a fourth (4^{th}) plant. The report determined three (3) tiers/levels to which it ascribed a proposed additional depreciation. The Kent

McPherson Report did not review the PFR of all plants to determine whether this reduction is warranted. Nor was there any analysis to determine the reason why the PFR at a specific plant might have declined. Upon further reflection, the author considered that applying the model based on three (3) tiers may be too cumbersome, therefore suggested a blanket reduction of 60% on all M&E. The Respondent's position is that no weight should be afforded to this concept as production rates are not specifications or characteristics applied to the assessment of M&E.

[410] The Respondent disagrees that the Zones, as established by the Applicant, are an assessment characteristic. Furthermore, it takes issue with the Applicant's position that being in a Zone makes any M&E located within that Zone "site-specific". The Respondent likens this to one making an assertion, under a market value scenario, that every building assessment in Edmonton is site- specific by virtue of the shared characteristic of being in Edmonton.

[411] The Kent McPherson Report suggested that consideration must be given to whether the asset is adding "proportional value". The Respondent's position was that if the asset is functioning, or capable of functioning, and meets the definition of M&E from the MGA, it is considered M&E. A blanket reduction is unwarranted. Furthermore, Mr. Beatty did not conduct an asset-by-asset review to determine whether assets should be included, or excluded, from assessment.

[412] There is vague reference in the Kent McPherson Report that certain of the assets are overbuilt; however, the Respondent's position was that the appropriate investigation in support of this statement has not been provided. The where, what, and how much questions remain unanswered. Simply using PFR was not sufficient quantification, and Dr. Thompson's evidence was that the gas plants are operating as expected.

[413] The Respondent also noted that within the assessments under complaint, there were already numerous idled/blinded assets. By applying a blanket reduction to all M&E under complaint, there could be a doubling of the benefit to CNRL. Where assets were idled/blinded, the assessment is already reduced to zero and the overall reduced production is considered. To then apply a blanket reduction to the other assets, based on PFR, could amount to an enhanced deduction value.

[414] The Respondent noted that the Applicant provided the Board with the ***Alberta (Municipal Affairs, Linear Assessor) v. Apache Canada Ltd., [2008] A.M.G.B.O. No. 62*** Board Order (Apache) (Exhibit C62) to discredit Dr. Thompson's statistical sampling theories. The Applicant stated that many of the arguments used by Dr. Thompson in this matter were remarkably like the ***Apache*** matter, and in that decision the Board decided against the theories of Dr. Thompson. The Respondent noted that ***Apache*** was a preliminary matter on how to address the depth of wells, which decided that 17 properties could be used to influence the assessment of over 11,000 properties. The Respondent's position was that there was no analysis by the Board as to how they came to their decision. Appraiser judgement was not discussed in the decision, so the Applicant's attempt to undermine Dr. Thompson's testimony and the rigor and robustness of Dr. Thompson's approach is unwarranted.

[415] The Applicant also questioned whether Dr. Thompson, as an expert, brought anything to the Board to assist it in reaching its decision. The Respondent testified that Dr. Thompson brought clarity on the statistical sampling discussion and information on the Gold Creek gas plant that resulted in the Applicant withdrawing that plant and related assets from the complaint along with the Progress gas plant and its related

assets. He also brought information forward on the natural decline rates attributed to the PFR. Notwithstanding the Applicant maintaining that those natural decline rates were associated with reserves and not gas plants, Dr. Thompson's evidence demonstrated how the curve was derived (R13, pages 37/38).

Natural Decline

[416] The Respondent's position is that the Applicant has not taken the natural decline curve identified in Dr. Thompson's Report into account. This renders the Kent McPherson calculation invalid.

Summary

[417] The Respondent confirmed it makes the joint recommendation with respect to the form of Confidentiality Agreement (Exhibit C43).

[418] The Respondent confirmed it makes the joint recommendation (Exhibit R46) with respect to certain buildings and structures under complaint for both assessment years.

[419] The Respondent's position was that the Applicant has failed to meet its burden of proof to demonstrate that any of the M&E has experienced site-specific loss in value that qualifies for additional Schedule D depreciation.

[420] The valuation standard is not market value, it is a regulated assessment. The CNRL Report attempts to demonstrate that the assessment of M&E does not represent market value and suggested that the Board should consider market value concepts in considering Schedule D additional depreciation. The Respondent's position was that the economic conditions are mitigated in the manner referred to by the Respondent - specifically, by way of CCRG excluded costs, assessment year modifier, truncated Schedule C, the statutory factor, and no education tax. The Applicant requests Schedule D consideration for lower gas prices; however, does not contemplate that when times are better the assessor cannot be drawn away from the regulated scheme.

[421] The CNRL Report identified several issues affecting the properties under complaint. The Respondent's position was that these issues are not unique to the properties under complaint. They affected all gas producers, and reflect a general economic loss, which is not permitted under the Directive. The Directive also requires any Schedule D adjustments to be site-specific, and the issues cited are not site-specific; they are broad issues, and as such should not be considered.

[422] The CNRL Rebuttal Report suggested a calculation to support the requested 50% reduction to M&E. The calculation was based on a utilization factor and the current assessment. There was no supporting data for the calculation and the Respondent opined that no weight should be given to that testimony.

[423] The Deloitte Report was based on a business valuation and the concept of fair market value. It too failed to recognize that the assessment was based on a regulated scheme. The business valuation also considered the underlying reserves of the properties, and then did not apportion the residual value between the reserves and the M&E. As well, a major assumption of the Deloitte Report was that the calculated value was reduced by the assessed value of linear property, which was assumed to be market value. This incorrect assumption rendered the entire calculation invalid. As well, the Respondent identified that the form of report

is the lowest level of assurance and that its independent expert did not review the source of the work to determine its veracity.

[424] The DMA Report also relied heavily on market value concepts, as with the CNRL and Deloitte Reports, and the valuation standard for M&E is not market value. No weight should be given to the DMA Report as the opinions were not consistent with the regulated assessment scheme.

[425] The Kent McPherson Report was the only evidence that provides an opinion in support of the requested amendments to the M&E assessment. The report assumed that Schedule A base cost was reproduction cost (or in other cases replacement cost). Once this assumption was made, the author used market value principles going forward.

[426] The Kent McPherson Report used three or four (3 or 4) gas plant results to determine a decline in flow-through rates as the basis for its request to apply a 60% reduction to the properties under complaint. The Respondent maintained that a sample size of three or four (3 or 4) properties was insufficient to draw conclusions that were then applied to the remaining properties. The Respondent disagreed with the Applicant's position that the results should be based on the appraiser's professional judgement instead of on statistical sampling principles. The Respondent's position was that intuitively, if a party is being asked to consider the results of a study, it is relevant to consider the source of the data, and whether it is representative of the entire group it proposes to be applied to. It is critical that a representative sample be obtained, and this did not occur in the Kent McPherson model. The Respondent also raised issue with how the sample size was chosen.

[427] The Respondent raised in its summary that all references by the Applicant to the 76 additional gas plants and their PFR, which were only considered in the Kent McPherson verbal testimony, be given no weight. The Respondent's position was that it had requested the information from the Applicant, and it had not been provided. Accordingly, because the data was fundamental to the Applicant establishing its recommendation for a 60% blanket reduction, no weight should be afforded to that evidence, because of a lack of procedural fairness.

[428] The Respondent submits that none of the expert reports (Deloitte, DMA, Kent McPherson) were of benefit to the Board. Further, the CNRL Report was also deemed to be of little value.

[429] The Applicant also opined that the issue in this matter is not a flow-through issue. However, the Kent McPherson Report relies heavily on PFR, and as a result it is difficult for the Respondent to understand how flow-through was not an issue raised by the Applicant.

[430] It was also the Respondent's position that the Applicant has not provided any data or formulae to support its request for a 50% reduction to M&E assessments.

[431] Without site specific evidence the Respondent's position was that additional depreciation cannot be granted.

[432] The Respondent's conclusion was:

> For the machinery and equipment which is under complaint, the Provincial Assessor submits that fluctuations in economic conditions or commodity prices do not qualify for additional depreciation under Schedule D. If the MGB agrees with the Provincial Assessor on this point, then all complaints regarding assessments of machinery and equipment for both the 2018 and 2019 tax years must be dismissed.
>
> In the alternative, if the MGB decides that general economic conditions and fluctuations in commodity prices can qualify machinery and equipment for additional depreciation under Schedule D, the Provincial Assessor submits the Complainant has failed to provide sufficient evidence proving that additional depreciation is warranted, beyond what has already been allowed for in the assessments. (Exhibit R8, page 46)

SUMMARY OF INTERVENOR'S POSITION

Introduction

[433] The Intervenor supported the Respondent's position.

[434] The Intervenor's position was that the issues for the Board to consider are not factual, but rather interpretive, or legal questions. The principal issues were:

a. Is the form of depreciation that the Applicant is seeking, which is general in nature and driven by the economy, allowed for in Schedule D?
b. Has the Applicant met the onus to demonstrate that Schedule D should be considered, and if so, whether the amount of additional depreciation has been proven?

[435] The Intervenor submitted the answers to both questions is "no".

[436] The Intervenor supported that the modern method of interpretation should be considered, ***Rizzo*** is appropriate, and the following aspects are relevant:

a. Textual – as read industry wide;
b. Contextual – the regulation in the assessment regulated regime;
c. Purposive – the ***Interpretation Act (RSA 2000 c I-8, s 10,*** Exhibit I20, Tab 4) states that all legislation in Alberta must be "construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects". The Intervenor interpreted remedial to mean the legislation is taken to be fixing something; addressing an outstanding issue that needs to be dealt with through legislation or in this case regulation. The Intervenor further interpreted objects to refer to the purpose of and act or regulation; what it is intended to accomplish.

Of the three aspects, the Intervenor considered the Purposive to be the most important.

[437] The Intervenor submitted that the assessment of M&E is carried out under a regulated standard because this type of property is unique, complex, and challenging to value. It is necessary to disassociate the M&E from the broader business interests of the owner. The process assesses M&E value and not the context of the business interest. It was the Intervenor's position that the Applicant focused on the value of the business rather than the assessment of the M&E.

[438] The Intervenor spoke to the one-dollar ($1.00) sales and argued those were the sale of business interests of which M&E was a component. Those sales were interpreted to include the mineral rights, the linear assets, the well assets and the reclamation or end of life consideration. The Intervenor's position was that the regulated regime attempts to "unpackage" the M&E component from the overall business value to derive a regulated assessment value as opposed to a market value.

[439] It was the Intervenor's position that the Applicant wanted the broadest definition of depreciation, highly influenced by market factors and that they focused on the market value of the business/assets. The Intervenor testified that if a market value consideration was applied to M&E, the values could swing wildly from year to year based on economic conditions. This is what the legislators were endeavoring to remove by mandating a regulated assessment regime, to ensure consistency, predictability, and overall accuracy in the assessment of M&E.

[440] The Applicant was advocating the use of the Kent McPherson Report model which was based on a small sample size and is applying it to hundreds of properties. The Applicant argues that the while Mr. Beatty did not visit more properties, the Provincial Assessor did not visit all the properties either. The Intervenor position was that if the regulated regime is applied, there is no need to visit the properties annually. There is typically little change year over year and the assessment process can be manageable. If Schedule D adjustments were to be introduced under the Applicant's proposal, it would necessitate a specific annual review of Schedule D, which defeats the purpose of the regulated regime.

[441] In respect of the ***Daishowa*** decision, the Intervenor considered the decision to be an outlier. It was a single property, looking at specific characteristics of that plant, where the local assessor had already applied a 10% Schedule D additional depreciation adjustment, for which there was no clarity. There was an equity issue with other pulp and paper plants which likely affected the Board's decision. The depreciation was not universally applied but was very site-specific. This decision is not binding on this Board.

[442] The Intervenor spoke to the evidentiary burden and onus on the Applicant. The Intervenor testified that recent Court decisions have provided guidance that there are generally two (2) principles relating to burden or onus of proof:

a. "the onus is on the party that asserts a proposition; and
b. Where the subject matter of an application lies particularly within the knowledge of one party, that party may be required to prove it." (***Canadian Natural Resources Limited v Wood Buffalo (Municipality), 2013 ABQB 91*** at para. 80, reviewed on other grounds, ***2014 ABCA 295)*** (Exhibit I20, Tab 5)

[443] The Alberta Court of Appeal also summarized the general principles in ***Metropolitan Conference Centre Inc v Calgary (City), 2018 ABQB 983*** at para. 70 (Exhibit I20, Tab 6):

> The burden of proof in MGA proceedings regarding tax assessments has been reviewed in numerous cases: see *BTC Properties II Ltd. v Calgary (City), 2010 ABQB 719* (Alta QB) at para 161; aff'd 2012 ABCA 13 (Alta CA). The applicant has an initial burden to put forth evidence that the assessment was incorrect. The burden then shifts to the respondent to provide evidence to rebut the evidence of the applicant. However, the applicant maintains the ultimate persuasive burden: *Eau Claire Market Inc. v Calgary (City), 2015 ABQB* 131 (AB QB) at para 31.

[444] The Alberta Court of Queen's Bench, affirmed by the Alberta Court of Appeal, also summarized the law relating to onus of proof in with respect to a decision cited as ***Calgary (City) v Alberta (Municipal Government Board), 2010 ABQB 719*** at para 161, aff'd ***2012 ABCA 13*** (Exhibit I20, Tab 7):

> The onus on the parties on an appeal of a tax assessment to the MGB was summarized by the MGB in ***Imperial Parking, represented by Deloitte & Touche LLP Property Tax Services v. Calgary (City), MGB Order 140/02*** as follows at p. 10:
>
> > …The ultimate burden of proof or onus rests on the Appellant, at an assessment appeal, to convince the MGB their arguments, facts and evidence are more credible than that of the Respondent. However, if the Applicant leads sufficient evidence at the outset to establish a prima facie case, the evidentiary onus shifts to the Respondent. In order to establish a prima facie case, the Appellant must convince the MGB panel that there is merit to the appeal.
> >
> > The Appellant must establish that it is more probable than not that the assessed value is incorrect or inequitable. Once the evidentiary onus shift occurs, then the validity of the assessment is in question. In order to rebut the Appellants prima facie case, and in order to raise a legitimate inference that the assessment is correct, the Respondent must lead evidence to counter the Appellant's evidence. At the end of the hearing, the MGB considers all the evidence presented and determines which party has established their case on a preponderance of evidence. In theory this means the party with the strongest case should prevail.
> > [emphasis added]

[445] The Intervenor position was that the Applicant has failed to provide a *prima facia* case in this complaint.

[446] The Intervenor opined that there was an insufficiency of evidence to support a 60% overall reduction. The Applicant admitted that no properties in the MD of Opportunity (Opportunity) or Northern Sunrise County (Northern Sunrise) were considered in the model prepared for the Kent McPherson Report. Accordingly, there was no evidence for Opportunity and Northern Sunrise to rebut. From a commonsense perspective, the Intervenor stated that it is not logical to apply a 60% reduction to assets in a municipality when none of the assets in the municipality were in evidence. Application of the Kent McPherson Report recommendations would produce "winners and losers" amongst municipalities, as there is no site-specific review as proposed in the legislation.

[447] The Intervenor also concluded that a significant aspect of the argument made in the CNRL Report and Rebuttal Report is that the gas price was $4.00/gj and is now $2.00/gj. As a result of this price decrease, the Applicant suggested that Schedule D additional depreciation should be allowed. The Intervenor submitted that this is a policy matter and not for the Board to consider. However, the Intervenor also noted that there is no provision in the legislation for an increase in assessment if the gas price increased, for example, to $8.00/gj.

[448] The Intervenor submitted that the Applicant appears to be proposing the "ad valorem" concept of levying of taxes in proportion to the estimated value of the goods or transaction concerned. The Intervenor's position is that this concept is not applied in today's assessment scheme. The current legislation in Alberta is towards assessing and creating an allocation of the tax burden. In the case of M&E, the assessment is calculated on a regulated basis.

[449] The Intervenor concluded that the complaints respecting property within Opportunity and Northern Sunrise should be dismissed in their entirety.

SUMMARY OF BOARD FINDINGS

ISSUE 1 - Should the Board accept the recommendations of the parties to amend the rolls for certain buildings and structures as recommended in Exhibit R46?

[450] The Board finds the proposed recommendations correct certain errors and amend certain buildings and structures containing blinded equipment. The Parties agreed to the joint recommendation and the Board accepts the recommendation. Findings not listed by design – just the decision

ISSUE 2 - What kind of evidence is "acceptable evidence" in support an additional depreciation adjustment under Schedule D?

a. What depreciation components are included in Schedule C?

[451] The Board finds that Schedule C includes normal physical, normal functional and normal external obsolescence.

b. What conditions are relevant when considering additional depreciation under Schedule D?

[452] The Board determined that Schedule D depreciation may be applied under conditions including the following:

a. Evidence showing an unforeseen decrease in age life or other factors affecting the appropriate distributions of costs over an asset's age life due to site specific factors;
b. The loss must be site-specific, permanent or long term, unexpected, affecting financial performance, material, and attributable to abnormal physical or functional which may include normal economic obsolescence. The additional loss in value must not be reflected in Schedule C, and it must be a condition not normally associated with a similar asset; and,
c. Additional loss in value could include a broad range of criteria, including (but not limited to) catastrophic events and losses relating to unexpected changes in market conditions.

> Acceptable evidence must involve permanent and unexpected negative impact on the utility, productivity, economic viability, or a reduction of the anticipated useful life of the asset.

[453] The purpose behind the regulated scheme is not to guarantee assessment at the lower of market value or Schedule C depreciated value. The replacement of market value with the regulated standard carries advantages to the taxpayer, including a fixed and immediate deduction of 25% at the outset of the asset's life, as well as the 77% statutory factor applied to the value.

[454] The Board finds that the assessment value objective for M&E in the regulated scheme is not market value. Market value concepts may be considered to demonstrate any loss in value; however, market value is not a standard for the assessed value.

[455] The Board finds that the plain reading of the words in Schedule D as well as the legislative intent of Schedule C is that some forms of additional depreciation are allowable and that if evidence of the loss in value can be provided and is measurable, the taxpayer should receive the benefit of it. The Board finds that additional depreciation is allowed for functional obsolescence, external obsolescence, locational obsolescence, and economic conditions. All the foregoing must be abnormal and not considered in Schedule C.

ISSUE 3 - If there is the basis for additional depreciation, what is the basis and extent for the additional depreciation?

[456] The Board previously determined in Issue #2 that additional depreciation could be considered on the following basis:

a. The Board finds that Schedule C includes normal physical and normal functional obsolescence which includes normal economic obsolescence;
b. The Board determined that Schedule D depreciation may be applied under the following conditions:
    i. Evidence showing an unforeseen decrease in age life or other factors affecting the appropriate distributions of costs over an asset's age life due to site specific factors;
    ii. The loss must be site-specific, permanent, or long term, unexpected, affecting financial performance, material, and attributable to abnormal physical, functional, or economic obsolescence. The additional loss in value must not be reflected in Schedule C, and it must be a condition not normally associated with a similar asset; and,
    iii. Additional loss in value could include a broad range of criteria, including, but not limited to, catastrophic events and losses relating to unexpected changes in market conditions. Acceptable evidence must involve permanent and unexpected negative impact on the utility, productivity, economic viability, or a reduction of the anticipated useful life of the asset.
c. The purpose behind the regulated scheme is not to guarantee assessment at the lower of market value or Schedule C depreciated value. The replacement of market value with the regulated standard carries advantages to the taxpayer, including a fixed and immediate

deduction of 25% at the outset of the asset's life, as well as the 77% statutory factor applied to the value.

d. The Board finds that the assessment value objective for M&E in the regulated scheme is not market value. Market value concepts may be considered to demonstrate any loss in value; however, market value is not a standard for the assessed value.
e. The Board finds that the plain reading of the words in Schedule D as well as the legislative intent of Schedule C is that some forms of additional depreciation are allowable and that if evidence of the loss in value can be provided and is measurable, the taxpayer should receive the benefit of it. The Board finds that additional depreciation is allowed for functional obsolescence, external obsolescence, locational obsolescence, and economic conditions. All the foregoing must be abnormal and not considered in Schedule C.

[457] In the subject complaint, the Board determines that while additional depreciation may be considered, the Applicant has failed to effectively support a basis for calculating a loss in value, or what the amount of the additional depreciation should be.

ANALYSIS - MERIT ISSUES

Issue #1 - Should the Board accept the recommendations of the parties to amend the rolls for certain buildings and structures as recommended in Exhibit R46?

[458] The Parties advised they had come to a mutual agreement to amend the assessed value of certain buildings and structures assessed by the Provincial Assessor. A recommendation was made to the Board to accept the proposed changes to the assessed value of those buildings and structures (Exhibit R46) in each of the 2018TY and 2019TY.

Applicant's Position

[459] The Applicant confirmed that the Parties made a recommendation to the Board to amend the assessed values of certain properties buildings and structures. The proposed changes are detailed in Exhibit C32.1. The Applicant requested that the Board adopt the recommendation at the time it issues its decision for the merit portion of the hearing.

Respondent's Position

[460] The Respondent testified that there was general mutual agreement with the Applicant on most of the buildings and structures within the properties under assessment, and that a joint recommendation was provided to the Board in Exhibits C32.1 and R46.

Joint Recommendation for Amendments to Complaints

[461] The Board requested that the Parties clarify their joint recommendation for an amendment to the assessments. The Parties agreed that Counsel for the Respondent would provide clarity regarding the details of the joint recommendation. Ms. Zukiwski provided a synopsis of the recommendation. This recommendation related to some of the buildings and structures and M&E assessments under complaint.

[462] The recommendation Ms. Young spoke to was Exhibit R46.

[463] Ms. Zukiwski referenced three components of the recommendation:

a. Amendments to the buildings and structures assessments of the three (3) gas plants referred to in the Kent McPherson Report;
b. Amendments to properties where M&E was completely blinded and was assessed at zero, where there was an assessment of buildings and structures housing blinded M&E; and
c. The remaining buildings and structures assessments under complaint.

[464] Ms. Zukiwski referred to proposed amendments identified in paragraph [463](a) above and specifically to the three reports prepared by the delegated assessors. Delegated assessors are assessors who have been contracted to provide assessment recommendations that form the Provincial Assessor's assessment of properties. The three reports were for Wheatland County (Exhibit R12), Municipal District of Fairview (Exhibit R14) and Municipal District of Lesser Slave Lake (Exhibit R18).

[465] The delegated assessor for Wheatland County identified errors in the Kent McPherson Report. This property was the subject of complaints only in the 2019TY. A site visit was conducted on January 10, 2020 and included the delegated assessor, representatives from the Applicant and a representative from the Provincial Assessor's office. It was determined that a compressor met the legislated terms for blinding, and it was recommended that the M&E assessment be reduced by $211,010 to zero. A corresponding reduction to the assessed value of buildings and structures based on recommendation, item [463] b of $73,050 was proposed.

[466] The delegated assessor for the Municipal District of Fairview identified errors in the Kent McPherson Report. This property was under complaint only in the 2019TY. A site visit was conducted on January 30, 2020 by the delegated assessor and a representative from the Provincial Assessor's office. A thorough review of the property identified potential corrections (Exhibit R14, Appendix 3) which would increase the assessed value of buildings and structures by $700,000. The delegated assessor recommended no change to the 2019TY assessment, and that the changes commence in the 2020TY.

[467] The delegated assessor for the Municipal District of Lesser Slave Lake identified errors in the Kent McPherson Report. This property was the subject of complaints for both the 2018TY and 2019TY. A site visit was conducted on January 23, 2020 which included the delegated assessor, representatives from the Applicant and a representative from the Provincial Assessor's office. A thorough review of the property identified a few corrections which reduced the buildings and structures assessment by $182,655 (2018TY) and $180,708 (2019TY). In addition, there were six (6) buildings not currently recorded on the assessment details which would increase the assessment by $241,090 (2018TY) and $241,530 (2019TY) (Exhibit R18, Appendix 3). The delegated assessor recommended the 2018TY assessment be amended for buildings and structures from $1,159,080 to $976,425 and for the 2019TY from $1,157,140 to $976,342. These are identified as Option #1 of the delegated assessor (Exhibit R18, para 26) which reduces the assessment based on the errors noted and defers the assessment of the six (6) properties not previously reported until 2020TY.

[468] In respect to item [463](b) above, a copy of the basis for the proposed recommendation was included in the Alberta Municipal Affairs – Sheila Young Report (Exhibit R19, Appendix 3). The proposed changes are summarized as follows:

a. In-service-equipment meets the definition of M&E within the legislation. Out-of-service equipment is equipment that no longer meets the definition of M&E;
b. Where out-of-service M&E has been identified, there is a portion of the buildings and structures that house out-of-service equipment;
c. The percentage of area housing in-service equipment is then calculated (the residue having out-of-service equipment occupying an area) and is referred to as the Percent in-service;
d. A table was prepared which provided the Percent in-service and established a corresponding Depreciation Factor, in the form of a percent remaining factor, to be applied after Schedule C depreciation; and
e. A table of examples was provided.

[469] In respect to item [463]c of the components of the recommendation, Ms. Zukiwski advised that the changes identified in items [463]a and [463]b would be applied as recommended. Any additional deductions indicated under the new methodology would be applied to CNRL properties in the 2020TY. Counsel for the Applicant confirmed that this was agreed upon.

[470] The Respondent identified a series of properties where the entire M&E had been reduced to zero assessed value due to blinding. For those properties, the Provincial Assessor would reduce the assessment for buildings and structures by the appropriate factor from the Depreciation Factor table referenced in paragraph [468]d above.

Board Decision

[471] The Parties provided a copy of proposed amendments to certain assessments of buildings and structures for 2018TY and 2019TY. The Board reviewed the proposed changes and accepted the joint recommendation (Exhibit R46).

Board Findings of Fact and Reasons for Decision

[472] The Board finds the proposed recommendations correct certain errors and amend certain buildings and structures containing blinded equipment. The Parties agreed to the joint recommendation and the Board accepts the recommendation.

Issue #2 - Does the weight of evidence support an additional depreciation adjustment under Schedule D to the assessment under complaint?

[473] The Board determined it was necessary to separate this issue into two sub-issues. Schedule D additional depreciation is based on depreciation not reflected in Schedule C, making it important for the Board to determine what depreciation is considered in Schedule C. Therefore, the two sub-issues arising are:

a. What depreciation components are included in Schedule C? and
b. What are the components of additional depreciation included in Schedule D?

Legislative Review and Historical Context

[474] The modern approach to interpreting legislative intent is found in the **Rizzo** decision, and has been reiterated in many subsequent decisions, including **Vavilov**. Both decisions reference the Driedger/Sullivan text, which supports a legislative interpretation that is sensitive to the ordinary meaning of the text, as well as its context, including historical context, and the purpose of the legislation.

[475] The roots of the current legislation date to 1984. At the time the legislation was enacted, the Minister of the day spoke to how the changes in legislation would "encourage new plant construction and will encourage replacement of old plant machinery and equipment in this province." (Exhibit C33, page 18)

[476] The significant 1984 amendments were as follows:

a. Replacement of a 5% declining balance depreciation from a starting point of 100% remaining. This was replaced with an immediate 25% depreciation, such that the starting remaining value of the asset would be 75% of its value;
b. Introduction of a floor, or threshold below which no further depreciation is allowed of 60% (40% of value remaining); and,
c. The foregoing created a range of 35% depreciation (between 75% of value to 40% of value remaining).

[477] The changes were intended to be of benefit to municipalities by providing a more consistent stream of revenue.

[478] In the 1984 amendment, the prescribed universal valuation standard was "fair actual value". All land except farmland was assessed at market value and regulated manuals were used to assess buildings, structures, and farmland.

[479] In 1995, further amendments were enacted which resulted in the creation of the MGA. Upon proclamation, two valuation standards were implemented:

a. Market Value. This is the standard to assess buildings and structures and is defined in MGA s.1(n) as "the amount that a property, as described in s.284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;" and,
b. Regulated Value. "The valuation standard set pursuant to the *Minister's Guidelines* for regulated property is not market value. Rather, it is determined by a formula that is intended to facilitate a predictable, consistent and stable assessment base that is not subject to the "peaks and valleys" of changing market conditions." (**TransAlta Generation Partnership v Regina**, 2021 ABQB 37 (TransAlta) (page 3, para 13))

[480] The rules for assessing property are codified in the MGA and cover land (s.290), improvements (s.291) and designated industrial property (s.292). The property is to be assessed on the valuation standards set out in the regulations (MRAT and MRAT 2018) for that property.

[481] Since 1995, the Minister has passed annual Minister's Guideline with respect to the preparation of assessments of all regulated property in Alberta. Valuation standards for regulated property are established pursuant to the applicable Minister's Guidelines, which include the *Alberta Farm Land Assessment Minister's Guidelines*, the *Alberta Machinery and Equipment Minister's Assessment Guidelines*, the *Alberta Linear Property Assessment Minister's Guidelines,* and the *Alberta Railway Assessment Minister's Guidelines.*

[482] The Valuation standard required by MRAT and MRAT 2018 specifies that assessors follow the applicable procedures for the valuation standards for buildings and structures and M&E in accordance with the Minister's Guidelines. For the 2018TY the applicable Minister's Guidelines is 2017 and for the 2019TY it is the 2018 Minister's Guidelines.

[483] MRAT and MRAT 2018 are virtually identical, although there are slight variations.

- For buildings and structures assessed in the 2018TY the MRAT reference was s.5 and for the 2019TY assessment it was MRAT 2018 s.13 as well as the Special Purpose Properties Valuation Guide – April 1999;
- For M&E assessed in the 2018TY the MRAT reference s.9 and for the 2019TY assessment it was MRAT 2018 s.12.

[484] The parties have provided the Board with a joint recommendation to deal with the buildings and structures assessments for the 2018TY and 2019TY.

[485] The Board's further analysis is restricted to comments pertaining to the M&E.

[486] The 2018 Minister's Guidelines for the 2019TY assessment of M&E requires that:

1.002 Calculation of Assessment

The assessment of machinery and equipment in a municipality shall be calculated by:

(a) Establishing the base cost as prescribed in Schedule A of the *2018 Alberta Machinery and Equipment Assessment Minister's Guidelines*;
(b) multiplying the base cost by the appropriate assessment year modifier prescribed in Schedule B of the *2018 Alberta Machinery and Equipment Assessment Minister's Guidelines* to adjust the 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 *2018 Alberta Machinery and Equipment Assessment Minister's Guidelines;* and
(d) if applicable, adjusting the amount determined in clause (c) for additional depreciation as prescribed in Schedule D of the *2018 Alberta Machinery and Equipment Assessment Minister's Guidelines*.

[487] The corresponding reference for the 2018TY is the *2017 Alberta Machinery and Equipment Assessment Minister's Guidelines*.

[488] Schedule A is the base cost of the property. It can be calculated in one of two ways. The first is to determine if the property is listed in Schedule A. If it is, then the cost is calculated at the prescribed rate which is reflective of 2005 costs. If it is not listed, then the cost is determined in accordance with the CCRG. The CCRG cost is then multiplied by a prescribed "cost factor" to convert the cost from the actual year of construction to 2005.

[489] The Applicant testified that the assessable costs as determined by the CCRG are not an issue. The Applicant testified that in the case of the subject complaints, most of the equipment base cost (Schedule A) originates from the original actual project costs, as adjusted, which the Applicant testified is based on the Replacement Cost New.

[490] Schedule B is the assessment year modifier. It converts the 2005 base cost as determined in Schedule A to the assessment year.

[491] Schedule C is the prescribed depreciation factor. The full definition from the 2018 Minister's Guidelines (2017 Minister's Guidelines are the same) is as follows:

> The depreciation factors for machinery and equipment described in the *2018 Alberta Machinery and Equipment Assessment Minister's Guidelines* are listed in Table 2 – Depreciation Factors. Depreciation for machinery and equipment that is not described in Schedule C of the *2018 Alberta Machinery and Equipment Assessment Minister's Guidelines* shall be determined in a manner that is fair and equitable with the depreciation factors listed in Table 2.
>
> The anticipated age life for machinery and equipment described in Schedule A is 20 years. The anticipated life for property and machinery located in specific types of property is listed in Table 1.
> **Age** refers to the chronological age or the effective age, in years.
>
> **Chronological age** is the actual number of years elapsed from the year the machinery and equipment was built, to the assessment year.
> **Effective age** refers to the estimated age of machinery and equipment based on its present condition, design features and engineering amenities. Effective age may be less than, equal to, or greater than actual age. Effective age is determined by examining the present condition, design features and the engineering factors of comparable types of machinery and equipment."

[492] Schedule D is additional depreciation. The definition from the Minister's Guidelines is as follows:

> For any depreciation that is not reflected in Schedule C, the assessor may adjust for additional depreciation provided acceptable evidence of such loss in value exists.

[493] In addition to the prescribed calculations noted above (A x B x C x D), a "statutory" factor of 77% is applied to arrive at the final assessed value.

[494] The Parties advised the Board that there was no disagreement with how the assessment of M&E was calculated in terms of Schedules A, B, C and the prescribed 77% factor. The issue to be determined by the Board is whether Schedule D additional depreciation should be applied.

Sub-Issue 2(a). What depreciation components are included in Schedule C?

Applicant's Position

[495] The Applicant maintained that Schedule C includes normal physical depreciation and normal functional depreciation; however, does not include external economic influences and that the Respondent has not demonstrated that economic obsolescence is included in Schedule C.

[496] The Applicant referred to the significant economic changes in the oil and gas industry and cited that the Minister's Guidelines had not revised the depreciation tables in Schedule C to account for the negative effect of these economic challenges.

Respondent's Position

[497] The Respondent's position was that Schedule C includes normal physical depreciation and normal functional depreciation and includes adjustments for normal economic obsolescence.

Board Finding – Sub-issue 2(a)

[498] Schedule C includes normal physical and normal functional obsolescence which includes normal economic obsolescence.

Reasons – Sub-Issue 2(a)

[499] The Board considered what depreciation occurred or was accounted for in Schedule C. There are no specifications in the MGA or the Minister's Guidelines as to what is included or excluded. Both parties agreed that Schedule C considered normal physical depreciation and normal functional depreciation.

[500] Physical depreciation is the aging of an asset and is evidenced by wear and tear. Normal physical depreciation is the expected depreciation applied over the age life of the asset. There are two types of physical depreciation – curable and incurable. Curable physical depreciation is corrected through normal maintenance. Incurable physical depreciation is either short-lived or long-lived. Short-lived items require periodic repair or replacement. Mr. Beatty cited examples such as flooring and paint, plumbing fixtures, heating apparatus, and some types of roof cover. Long-lived items are those that are expected to last the full life of the asset. Mr. Beatty provided examples such as foundations, framing members, exterior walls, and roof framing. Both types of physical depreciation are considered normal depreciation in the age-life formulas.

[501] Functional depreciation (obsolescence) is attributable to a defect within the property. This type of obsolescence accrues when there is a flaw in the structure, materials, or design that diminishes the function, utility and value of the improvement when compared to the highest and best use and most cost-effective functional design requirements at the time of the valuation. Functional obsolescence may be caused by a

deficiency and/or a super-adequacy; some forms are curable, and others are incurable. The obsolescence is curable when the cost to cure is equal to or less than the increase in value resulting from the warranted change or addition. By contrast, if the cost to cure exceeds the potential increase in value of the improvement, the obsolescence is deemed incurable. Normal curable and incurable functional obsolescence are expected to be considered in the age-life formulas of Schedule C.

[502] The Board considered prior Board Orders and Court Decisions which opined on what was included in Schedule C.

a. ***BP/Greenview and BP/Woodlands*** – "If an event or circumstance is to be expected based on the nature of the M&E and its normal context and function, then any resulting loss is contemplated by the scheme set out in Schedule C." (Exhibit R9, Tab 8, page 32, and Exhibit R9, Tab 4, page 25)
b. ***BP/Woodlands*** – "…depreciation is generally understood to allocate an asset's net applicable cost in a methodical fashion over its useful life. Certainly, this is the approach taken under Schedule C." (Exhibit R9, Tab 4, page 26)
c. ***BP/Woodlands*** – "If the event is expected based on the nature of the M&E and its normal context and function, then the kind of loss resulting from it is already contemplated by the scheme set out in Schedule C." (Exhibit R9, Tab 4, page 26)
d. ***ATCO Power Ltd. and Alberta Power (2000) Ltd. and The Designated Linear Assessor for the Province of Alberta,*** Board Order: MGB 117/05 (ATCO) – "2. The Schedule C depreciation tables are intended to account for losses in value due to a wide range of causes including decommissioning costs, functional, physical, and economic obsolescence. 3. The Schedule C depreciation tables do not reflect obsolescence due to causes that were unforeseeable when the tables were prepared. Such obsolescence may result from catastrophic events, but may also have other causes." (Page 13)
e. ***ATCO*** – "…evidence establishes at least two important findings in relation to Schedule C tables: (1) they are based on forecasts respecting a wide range of factors (including market factors) that tend to cause obsolescence, and (2) they are intended to spread included costs methodically over the anticipated service life of an asset.' (Page 14)
f. ***Pan Canadian Energy Services, Encana Corporation and The Crown in Right of the Province of Alberta (Assessment Services Branch, Ministry of Municipal Affairs,*** Board Order: MGB 039/06 **–** (quashed on other grounds by ***Pan Canadian Energy Services v. Alberta (Municipal Affairs),*** 2008 ABQB 393 (Pan Canadian 2006) – "Schedule C of the Guideline is a table setting out a calculation process to determine depreciation for linear property like the Cavalier Station based on costs formula inputs and depreciation." (Exhibit C31, Tab 17, para. 22)

[503] The Board notes that not all the foregoing decisions are specifically related to M&E. ***ATCO*** and ***Pan Canadian 2006*** are Linear Property matters. The Board considered these decisions as they related to the interpretation of Schedule C, rather than the determination of how the actual tables were prescribed in Schedule C.

[504] The Board also considered the Applicant's cases that were from outside the jurisdiction of Alberta, as well as Alberta decisions that pre-dated the most recent change in legislation. The Board found that those cases were less useful as they did not relate to the legislation the Board is reviewing to make its decision. This interpretation was supported in the ***TransAlta*** Court decision (para 55).

[505] In finding that Schedule C was contemplated to include normal physical depreciation and normal functional obsolescence which includes normal economic obsolescence, the Board deems it reasonable that this scheme would address the expected normal consequences to the age life of the asset. In terms of M&E, that age life does not include full mortality, as the asset never falls below 60% depreciation (40% remaining value). The Court decision in ***TransAlta*** supports this finding, as does the ***ATCO*** Board Order. The Court found that regulated property is not assessed based on market value. "…it is determined by a formula that is intended to facilitate a predictable, consistent and stable assessment base that is not subject to the "peaks and valleys" of changing market conditions". ***ATCO*** found that economic obsolescence was intended in Schedule C tables, and – while not bound by its previous decisions - the MGB still agrees with this conclusion. This finding is also consistent with the Board's interpretation of Schedule C depreciation in the Linear context, which the ABQB accepted in ***Pan Canadian*** (at para 21 ff) - though the Board Order was quashed on other grounds.

Issue 2(b). What are the components of additional depreciation included in Schedule D?

Applicant's Position

[506] The Applicant's position was that the intent of Schedule D is to allow for additional depreciation in property assessment to recognize losses in value from any cause. It maintains that the allowance of additional depreciation provides for fairness in assessment, whether it is site-specific or industry wide.

[507] The Applicant, through Mr. Beatty, also provided a definition of depreciation (Exhibit C7) as:

> a. "Depreciation, defined simply, is the loss in value, relative to cost, from any cause. The widely recognized approach to estimating depreciation includes separate consideration of the physical wear and tear of an aging improvement from losses due to functional issues, which are both distinct from external obsolescence. The only constant within this framework is physical depreciation, since both functional and external obsolescence apply to some, but not all buildings or other assets."

[508] The Applicant noted that the Provincial Assessor's November 2018 Directive was issued after the filing of the 2018TY complaint and as a result the Applicant could not have been aware of the Respondent's Directive prior to filing its complaint of the 2018TY. The Applicant also argued the Board should not consider the testimony of Ms. Young, a senior civil servant, to be evidence of the intent of the legislature to mitigate economic obsolescence. (***Sullivan,*** Exhibit C31, Tab 11, pages 487-488)

[509] The Applicant stated that the Alberta 2001 Metal Buildings Manual describes abnormal depreciation as follows:

> Abnormal depreciation is the loss in fair actual value over and above a loss attributable to deterioration and obsolescence as measured in the remaining life tables. Abnormal

> depreciation is unique to a property and is the result of unexpected changes in the circumstances of the property. (Exhibit C7, page 33)

[510] The Applicant maintained that super-adequacy can be ascertained using the Replacement Cost New method and backing out the cost of the super-adequacy prior to the application of any form of depreciation.

[511] The Applicant argued that the difference between Reproduction Cost New and Replacement Cost New is used to quantify functional obsolescence. The definitions of Reproduction Cost and Replacement Cost New are as follows:

> Reproduction Cost New is defined as an estimate of the amount required to reproduce an asset at one time in like kind and materials in accordance with current market prices for materials, labour, and manufactured equipment, contractor's overhead and profit, and fees, but without provision for overtime, bonuses for labour, or premiums for materials or equipment.
>
> Replacement Cost New is defined as the estimated amount required to replace an asset at one time with a modern new one. The asset would be replaced using the most current technology and materials that will duplicate the production capacity and utility of the existing asset at current market prices for materials, labour, and manufactured equipment, contractors' overhead and profit, and fees, but without provision for overtime, bonuses for labour, or premiums for materials or equipment.

[512] The Applicant considered economic obsolescence or external depreciation, and maintained that the key elements associated with external obsolescence are:

a. The influence is external to the property;
b. The influence has more than a short-term impact;
c. The remedy is outside the control of the property owner; and,
d. The influence has a measurable effect on value.

[513] The Applicant suggested external obsolescence would be considered abnormal, noting the DMA Report provided that a loss in value due to adverse economic conditions exists and this would be the basis for abnormal, or additional depreciation.

[514] The Kent McPherson Report stated that when applying obsolescence, Mr. Beatty combined functional depreciation and external obsolescence components with a single factor and contended that was reasonable.

[515] The Applicant also argued that many of the assets subject to these complaints are at the maximum depreciation allowed based on Schedule C. That is, they have reached the maximum allowable depreciation of 60% (40% remaining value). Because the base year modifier is increasing, the assessed value of these properties is increasing. The Applicant maintained that this increase is refuted by economic conditions and is a further reason for consideration of additional depreciation under Schedule D.

Respondent's Position

[516] The Respondent testified that the Provincial Assessor's November 2018 Directive allowed for additional depreciation for functional obsolescence, and external obsolescence or locational obsolescence, but that it must not be applied for economic conditions. The Respondent also testified that the practice of assessors prior to the Directive was the same as outlined in the Directive.

[517] The Respondent introduced testimony through Sheila Young and her Report that in her opinion, the CCRG excluded costs, truncated depreciation curve, 77% statutory level, and no education tax mitigates any general economic obsolescence.

[518] The Respondent did not offer any testimony to dispute the Applicant's statement concerning super-adequacy as a form of functional obsolescence; nor did it offer a different opinion with respect to the Applicant's definition of the key elements of external obsolescence.

[519] The Respondent conceded that the Zeiner Report was confined to buildings and structures. However, Mr. Zeiner's testimony was that the concept of applying functional depreciation and economic obsolescence was the same for M&E. The Zeiner Report position was that functional and economic obsolescence should be determined separately and applied separately.

Board Findings- sub-issue 2(b)

[520] The Board determined that Schedule D depreciation may be applied under the following conditions:

a. Evidence showing an unforeseen decrease in age life or other factors affecting the appropriate distributions of costs over an asset's age life due to site specific factors;
b. The loss must be site-specific, permanent or long term, unexpected, affecting financial performance, material, and attributable to abnormal physical or functional which may include normal economic obsolescence. The additional loss in value must not be reflected in Schedule C, and it must be a condition not normally associated with a similar asset; and,
c. Additional loss in value could include a broad range of criteria, including, but not limited to catastrophic events and losses relating to unexpected changes in market conditions. Acceptable evidence must involve permanent and unexpected negative impact on the utility, productivity, economic viability, or a reduction of the anticipated useful life of the asset.

[521] The purpose behind the regulated scheme is not to guarantee assessment at the lower of market value or Schedule C depreciated value. The replacement of market value with the regulated standard carries advantages to the taxpayer, including a fixed and immediate deduction of 25% at the outset of the asset's life, as well as the 77% statutory factor applied to the value.

[522] The assessment value objective for M&E in the regulated scheme is not market value. Market value concepts may be considered to demonstrate any loss in value; however, market value is not a standard for the assessed value.

[523] Additional depreciation is allowed for functional obsolescence, external obsolescence, locational obsolescence, and economic conditions. All the foregoing must be abnormal and not considered in Schedule C.

Reasons – sub-issue 2(b)

[524] The Board considered what depreciation could occur or be accounted for in Schedule D. As with Schedule C, there are no specifications in the MGA or the Minister's Guidelines as to what is included or excluded in Schedule D. There was also a divergence between the Parties as to what should be allowed under Schedule D.

[525] The plain reading of the words in Schedule D as well as the legislative intent is that some forms of additional depreciation are allowable and that if evidence of the loss in value can be provided and is measurable, the taxpayer should receive the benefit of it.

Abnormal Depreciation

The parties agreed that normal physical and functional depreciation is covered in schedule C – leaving abnormal depreciation for potential inclusion under Schedule D.

[526] The Board considered what might constitute abnormal losses in value.

[527] With respect to the Provincial Assessor's November 2018 Directive, the Board acknowledges the direction provided to assessors, but finds the Provincial Assessor has no legislative authority to establish what does or does not constitute a loss under the provisions of Schedule D. Furthermore, the Provincial Assessor cannot mandate the exclusion of economic conditions from consideration in determining the existence of additional depreciation. The Board notes that the Respondent was unable to offer any documentation to lend legislative support to the provisions of the November 2018 Directive.

[528] The Respondent repeated, on many occasions, an interpretation of certain aspects of the legislation purportedly mitigating economic obsolescence. Ms. Young is the Respondent's Director, Assessment and Property Tax Policy Group and as such would have access to these policies; however, there was no independent support provided by the Respondent for the expressed opinions. The Board does not accept the concept that the alluded factors mitigate general economic obsolescence and found no legislative policy confirming it.

[529] The Board finds that abnormal functional depreciation could occur when a designed asset, upon going into service, does not perform to the level it was designed for. Quantification would be based on the cost to cure, and the depreciation would exist until the fault is remedied.

[530] Abnormal functional depreciation is sub-divided into inadequacies or deficiencies and super-adequacies or excesses. The test whether the obsolescence is curable, or incurable is whether the value added by correcting the obsolescence by replacement, remodeling, addition, or removal, is equal to or greater than the cost to cure. For super-adequacies, the definition is that they do not add value equal to their cost and are therefore unwarranted. Both types of functional obsolescence would be considered abnormal and would not be included in the charts for M&E Schedule C.

[531] The Board accepts that the difference between Reproduction Cost New and Replacement Cost New would assist in the quantification of abnormal functional depreciation. However, the determination would need to be done on a site-specific basis.

[532] The Respondent supports this concept as provided in the Sheila Young Report. The report states:

> 36. If the assessed person is unable to correct the site-specific issue because it is unsolvable or beyond a reasonable cost, Schedule D depreciation is likely warranted. (Exhibit R19, page 12, para 36)

[533] The Board considered the Applicant's position with respect to key elements of external obsolescence, and the Board finds that this external obsolescence would not be included in Schedule C tables, other than normal external obsolescence as determined by this Board and supported by the ***TransAlta*** and ***ATCO*** decisions.

[534] The Board considered the Kent McPherson Report approach of combining the functional depreciation and economic obsolescence, versus the Zeiner Report approach to distinguish between the two. The Board finds the Zeiner Report approach to be more reliable as unique factors would be considered and applied separately. Combining the factors without being able to specify their individual effect is not reasonable.

Market Value Considerations

[535] The Board considered the application of market value concepts in the determination of potential Schedule D additional depreciation. The ***TransAlta*** Court Decisions stated:

> [54] …the Applicant's argument proceeds from the faulty premise that any departure from market value is outside the Minister's authority. The approach is clearly at odds with the *MGA*, which permits the Minister to establish valuation standards for regulated property. That authority to establish valuation standards, in my view, is not limited to setting out the approach to be taken in determining market value. Rather, it allows the Minister to depart from market value entirely.
>
> [55] I agree with the Respondents that, while predecessor regimes relied heavily on the concept of market value, the current *MGA* regime represents a move away from this approach. Consequently, the prior statutory provisions and cases decided thereunder are of little assistance to the Applicants.
>
> [57] The Minister is empowered under the MGA to set applicable depreciation in a manner consistent with the government's policy objectives.

The Board finds that the assessment value objective for M&E within the regulated scheme is not market value. Market value concepts may be considered to demonstrate any loss in value; however, market value is not a substitution for the assessed value.

[536] The Applicant argued that assets are increasing in assessed value because of the base year modifier. The Applicant maintained that this is a further reason for consideration of addition depreciation under

Schedule D. The Board does not agree with this argument. The imposition of the base year modifier is to value the property in the assessment year, like an inflationary adjustment factor, and the increase would not be a reason for additional Schedule D depreciation.

[537] The Board also considered the effect of "blinding" assets. This concept allows for assets which meet the definition within the Minister's Guideline to have their assessment reduced to zero. The Board finds that approach reasonable when the assets are no longer used, or are not capable of being used, and are taken out of service. The Applicant has already blinded many of its assets and assessments have been revised accordingly. The Board is concerned that the Applicant is potentially co-mingling the blinding of assets with a general reduction, which may result in a doubling of the benefits if the Board were to adopt the broad general reduction of 50%.

Abnormal Depreciation caused by Economic Conditions

[538] As stated earlier in this order, the Board sees nothing in the wording of the legislation that excludes general economic factors as a potential cause of abnormal depreciation to be covered under Schedule D. At the same time, changes in economic factors affecting the oil and gas industry are both expected and difficult to predict – in other words, the only certainty is that changes will occur. Against this context, the Board agrees with the Respondent's broad point that the regulated assessment regime, including the regime for M&E, is intended to maintain a level of stability and predictability as to assessed values; accordingly, an interpretation which attempts to harness schedule D as a way to adjust for every loss in value caused by fluctuations in economic circumstances is out of keeping with the overall legislative intent.

[539] Having said this, where changes in economic factors are shown to have a disproportionate negative effect on a particular property in relation to its peers or competitors, their effects may be considered abnormal in the sense they do not affect all properties equally. Further, it would be unfair to deny adjustments to address unique or site-specific effects so as to preserve equitable treatment between properties of the same class. In the absence of specific wording to the contrary, the legislation may be presumed to intend to avoid unfairness or inequity. In the Board's view, Schedule D is intended as a mechanism that gives the Provincial Assessor broad discretion to make adjustments to accommodate unique or site-specific effects of various circumstances on individual properties. This interpretation is supported by the majority of the recent authorities referred to by the parties.

Authorities

[540] The Board considered prior Board Orders and Court Decisions which gave direction as to was included in Schedule D.

a. ***Amoco/Greenview*** – "In order for the Board to recognize functional and/or economic obsolescence it must be proven that the property (improvement) in this case a "gas plant" is suffering from a situation not normally associated with the normal condition or operation of similar or like improvements. In terms of gas plants, the Board recognizes that typically gas plants operate in an ever-changing operations environment and adaptation to changes is normal." (Exhibit R9, Tab 7, page 35)
b. ***BP/Greenview*** – "For the purpose of Schedule D depreciation, the MGB finds that suitable evidence of a loss in value must show a permanent and unexpected loss in value of a kind

that would support a new scheme to allocate value over the asset's remaining life. If the loss in value is expected based on the nature of the M&E and its normal context and function, then the loss is already contemplated by the scheme set out in Schedule C, which caps depreciation at 60% after 18 years. On the other hand, if the loss in value is unusual or unexpected, then this circumstance justifies creating a new scheme to allocate new and unexpectedly low value of the asset." (Exhibit R9, Tab 4, page 33)

c. ***BP/Woodlands*** – "The MGB is convinced that acceptable evidence of loss in value to show additional depreciation should be seen in the light of the depreciation already granted through Schedule C's methodical distribution of included costs over an asset's anticipated useful life. Any event or circumstance that would shorten the anticipated useful life of the asset or otherwise require an unanticipated adjustment to Schedule C's allocation scheme may qualify as an acceptable evidence of loss. If the event is to be expected based on the nature of M&E and its normal context and function, then the kind of loss resulting from it is already contemplated by the scheme set out in Schedule C. On the other hand, if the event or its negative impact is unusual or unexpected, then adjusting the allocation scheme set out under Schedule C may be justified. In short, the MGB finds that acceptable evidence of a loss in value for the purposes of Schedule D must involve permanent and unexpected negative impact on the utility, productivity, economic viability or useful life of the asset in question." (Exhibit R9, Tab 4, page 26)

d. ***Daishowa*** – "The criteria to be applied in the recognition of additional depreciation under Schedule D should not be unduly restricted. The inquiry can incorporate a broader group of criteria, including physical and economic criteria that are capable of showing a significant additional loss in value not reflected in Schedule C." (Exhibit R9, Tab 9, page 14)

e. ***Daishowa*** - "Both agreed that losses could qualify if caused by abnormal physical, functional or economic obsolescence." (Exhibit R9, Tab 9, page 14)

f. ***Daishowa*** – "…the MGB notes that the wording of section 5.000 of the Minister's Guidelines is very broad in scope. It does not stipulate that only catastrophic events can be considered for the purposes of establishing Schedule D depreciation. Rather, it says Schedule D is to be used "[f]or any depreciation that is not reflected in Schedule C…". The plain meaning of this provision thus incorporates a broad group of criteria; indeed, the sole limitation is that they must show depreciation not reflected in Schedule C." (Exhibit R9, Tab 9, page 15)

g. ***Daishowa*** – "Accordingly, the MGB finds that a catastrophic event, or an event that shortens the life of a facility are not the only criteria to be considered; neither must the criteria necessarily be site specific. Rather, the inquiry can incorporate a broader group of criteria, including physical and economic criteria that are capable of showing a significant additional loss in value." (Exhibit R9, Tab 9, page 15)

h. ***Daishowa*** – "Acceptable evidence of a loss in value, site-specific loss, permanent or long term, unexpected loss, financial performance, materiality, circumstances not captured in Schedule C, and the curability of the economic obsolescence were found to be criteria that can be indicative of a loss in value. No single criterion is determinative in and of itself. The amount of depreciation under Schedule D should be chosen to redress any unfairness that may result after the Schedule C depreciation has been applied." (Exhibit R9, Tab 9, page 37)

i. ***ATCO*** – "Schedule D allows the assessor to allocate further depreciation for losses due to unforeseeable causes of obsolescence. Such losses would include, but are not necessarily limited to losses resulting from catastrophic events and could include losses relating to unexpected changes in market conditions." (Page 17)

j. ***ATCO*** – "…the MGB finds that while market value concepts may be of relevance to the regulated scheme, market value is not the regulated standard and the DLA is not necessarily obliged to adjust an assessment downward to market value. The purpose behind the regulated scheme is not to guarantee assessment at the lower of market or Schedule C depreciated value. In this connection, the MGB notes that the replacement of market value with the regulated standard carries advantages to the taxpayer, including a fixed and immediate deduction of 25% at the outset of the asset's life." (Page 19)

k. ***Pan Canadian 2006*****:**
"[24] The Board found that "additional loss" had to be interpreted within the context of the regulated assessment regime of which Schedule D formed a part. It accepted the evidence of an expert witness called by the Crown that "the core concept of the relevant regulated standard centers on the rational distribution of included costs over the anticipated useful life of an asset." The Board also accepted that this pattern of distribution bears no particular relationship to market value, noting this was "not surprising". Thus, the Board did not accept Encana's submission linking market value and depreciated Schedule C value. It distinguished the cases cited by Encana, commenting that there was no foundation to "superimpose market value on the regulated standard either in logic or legislation". What was required, according to the Board, was "evidence as to how circumstances that are not contemplated under Schedule C might affect the regulated depreciation schedule differently" for the property in question."
[25] While the Board commented that market value and depreciated cost value are conceptually different, it found that market value was still relevant in determine whether obsolescence has occurred, and a change of market value relative to other similar property may indicate that the obsolescence affects the property uniquely. However, it alone does not help to quantify "additional loss" in the context of the regulated regime." (Exhibit C31, Tab 17, para 24 and 25)

l. ***Pan Canadian 2006*** - "The Board commented that persuasive evidence of unforeseeable loss or abbreviation of useful life would be acceptable evidence for the purpose of Schedule D, and that evidence relating to market value could be relevant as a reflection of this. The Board stated, though, that the regulated standard for the stipulated properties was not market value, concluding that the new standard carries with it certain advantages to the taxpayer." (Exhibit C31, Tab 17, para 38) "…the Board referred to the Atco decision and commented that its decision added to the reasoning in Atco, representing a more complete review of the legislation and its intent, and would not change the outcome in Atco. I must agree. I cannot find that the Board departed from the Atco decision in its reasons that are before me in this judicial review." (Exhibit C31, Tab 17, para 40)

m. ***Pan Canadian Energy Services, Encana Corporation and The Crown in Right of the Province of Alberta (Assessment Services Branch, Ministry of Municipal Affairs)*** Board Order: MGB 036/07 (Pan Canadian 2007) – "The MGB has indicated in prior orders that evidence showing an unforeseen decrease in age life or other factors affecting the appropriate distributions of costs over age life due to site specific factors would be suitable evidence to support further depreciation under Schedule D." (page 19)

[541] The Board notes the ***Daishowa*** decision is somewhat unclear as it relates to a requirement for site specificity of loss. On the one hand, paragraph [647 g.] in the above Board's ***Daishowa*** analysis states that "neither must the criteria necessarily be site specific"; on the other hand, paragraph [647 h.] lists criteria, none of which it considers determinative, to include "…evidence of a loss in value, site-specific loss…". While recognizing it is not bound by its own previous decisions, this panel interprets the ***Daishowa*** decision as requiring site-specific loss to qualify under Schedule D under the M&E Guidelines then under consideration. The Board in ***Daishowa*** appears to have granted additional depreciation appears to preserve equity basis depreciation granted to other forestry industry assets; however, the increase in depreciation was site-specific to ***Daishowa***, as there was a wide range of additional depreciation allowed to the nine (9) forestry operations considered.

[542] The Board also considered the cases cited from outside the Alberta, as well as Alberta decisions that pre-dated the most recent changes in legislation. However, as previously noted, these cases are less useful as they do not relate to the legislation the Board is reviewing to make its decision. This was supported in the ***TransAlta*** Court decision (para 55).

[543] The Board notes that the ***Trans Alta*** Court decision was released in January 2021, after the MGB's final day of hearing. The Respondent advised the Board of the decision, and both parties received an opportunity to provide further written submissions. Ultimately, neither party provided extensive submissions, though Counsel for the Respondent advised an appeal to the Court of Appeal was anticipated.

Site specific

[544] The Board acknowledges that the words "site specific" do not appear in the instructions to the assessor that are included in either Schedule C or D for the M&E for the years in question. It was argued that such a limitation should not be inferred without specific wording, and that the drafters of the Minister's Guidelines could have added that limitation had that been the intent.

[545] The Board does not find this argument sufficiently persuasive and notes the wording now under consideration is quite similar to that examined in other cases, where a requirement for site specific effects was inferred. For example, in ***Pan Canadian***, the MGB concluded the assessor's ability to provide relief in a case by case basis "if acceptable evidence of loss is provided and documented by the linear property owner" was intended to prevent inequity between similar classes of property based on unique factors. It is true that in ***Pan Canadian***, the Board found support for site specificity in the Linear Guideline's stipulation that additional depreciation must be considered only on a "case by case basis". Although the equivalent provisions in the M&E Guidelines do not contain the same phrase, the same intent may be inferred in the M&E context, where in practice the potential for Schedule D depreciation is considered with respect to "acceptable evidence" that may vary in its applicability from one case to another. In other words, reasons for Schedule D depreciation are considered "case by case".

Issue 3 - If there is the basis for additional depreciation, what is the basis and extent for the additional depreciation?

Applicant's Position

[546] The Applicant seeks a reduction to the M&E assessments under complaint through a Schedule D application for additional depreciation based on economic obsolescence. The Applicant's position is that there is a basis for additional depreciation, and a reduction in the assessment of 50% for M&E should be allowed.

[547] The CNRL Report and Rebuttal (David Pole) opined that prior to 2009 the average price for natural gas was about $7/gj. Since that time, the price has been substantially lower and is sub $4/gj, and in certain instances the price has become negative (having to pay users to take the product).

[548] Mr. Pole further elaborated that CNRL's position was that:

a. "The significant change in the economics circumstances of the gas industry in the last years has affected the market forces of supply and demand that have diminished influence the value of gas properties.
b. Declining gas prices, excess gas supply in North America, price differential due to market constraints and high regulatory burden has placed the Alberta Gas industry in a sustained adverse economic scenario.
c. Long term forecast of the gas prices in the future shows a steady trend with low prices around $2/gj. Despite seasonal rally gas prices, AECO prices will stay low.
d. The high rate of insolvent companies, diversion of investment, decreasing land sales, high orphan well counts, and outstanding accounts receivable are clear symptoms of a long-term challenging scenario for the Alberta gas industry. All these matters have a direct influence in the value of gas companies.
e. Negative cash flows, equipment sales or the lack thereof, and transactions for gas properties are all indications of a significant loss in value.
f. The market forces have negatively influenced the operation of Canadian Natural's fields under complaint creating a very challenging economic scenario. The value of the assets related to these fields has decreased significantly, and the loss in value should be reflected in the assessed value of each of the properties that are the subject of the complaint."

[549] A chart was included in the CNRL Rebuttal Report for the 2018TY and the 2019TY to support the requested amendment of assessment to M&E. The chart included the assessed value of the assets under complaint broken into "Plants, Compressors, Wells and Other" and applied a percentage of the total assessment to the applicable zone. From that group CNRL selected a sample size and determined a utilization factor – in the case of plants based on throughput and for compressors based on horsepower utilization. The calculation was then based on the utilization factor applied to the assessment under complaint, and a proposed assessment value was calculated. During Mr. Pole's testimony he confirmed that the line item "Wells" should be excluded, and the revised assessments required amendment. Mr. Pole suggested that the calculations supported the 50% reduction to M&E requested. Mr. Pole also confirmed under questioning that he had not provided any support or other backup information to allow for his calculations to be reviewed.

[550] In the Deloitte Report and Rebuttal, Mr. Koller's opinion was that the residual value of the Zones, after deducting the assessed value of linear property (which was assumed to be market value) was no value

in zones A or B for the 2017AY and 2018AY. The value to be apportioned between oil and gas reserves and designated industrial property for Zone C for the 2018AY was not significant (no calculation was made for Zone C in the 2017AY as no properties within that zone were subject to complaint for that year).

[551] In the Kent McPherson Report and Rebuttal, Mr. Beatty quantified obsolescence by placing the gas plants into three (3) bands/tiers of production. His theory determined the appropriate application of additional depreciation provided for in Schedule D could be as follows:

Level	Production - as % of Design Capacity	Obsolescence - Buildings & Structures		Obsolescence - M&E
1	Less than 50% more than 25%	50%		50%
2	Less than 25% more than 10%	65%		65%
3	Less than 10%	80%		80%

[552] Mr. Beatty's initial position was that the proposed model could be applied across the asset inventory and would be reliable, easily applied and could be varied to suit changing circumstances in future years. However, Mr. Beatty later testified that upon reflection, the model might not be as easily applied as first thought. Therefore, he considered a further simplified calculation, applying a universal figure for the functional and economic obsolescence. Mr. Beatty's analysis concluded a 60% (40% residual) obsolescence factor, based primarily on economic factors, could be applied. The obsolescence would be applied as a single factor, and other calculations would be adjusted accordingly.

[553] Mr. Beatty summarized that his methodology is based on the replacement asset theory. He opined that his approach is technically an application of incurable functional obsolescence; however, the model also considers economic obsolescence. Mr. Beatty considers that the model is advantaged in that it does not have a specific quantification between functional and economic obsolescence. The model relies on production ratios as a practical means of recognizing both forms of obsolescence through the replacement asset model. In his opinion, a reduction of 60% for additional Schedule D depreciation should be provided.

[554] In the DMA Report and Rebuttal, Mr. Pierson concluded that a Schedule D allowance should be made based on the concept that "a loss in value applicable to adverse economic circumstances in an industry forms a valid basis for an additional depreciation allowance". He did not provide any calculations; however, he supported the CNRL request for a 50% Schedule D allowance for M&E.

[555] The Applicant summarized that additional depreciation was warranted based on a loss in value from any cause; however, the most significant factor was the economic obsolescence because of lower natural gas prices.

Respondent's Position

[556] The Respondent's position is that there is no provision within Schedule D to allow for general economic obsolescence and accordingly no additional depreciation under Schedule D should be considered.

[557] Mr. Minard testified that the practice of the Respondent was not to allow general economic obsolescence. He testified that buildings and structures assessments could include a loss due to general economic obsolescence as the assessment was based on market value; however, M&E assessment was regulated and an economic loss in value could not be considered. No industry trending should be considered when determining economic obsolescence.

[558] Mr. Minard also stated that the only way to consider economic obsolescence in M&E is to review the property to determine if there is "any site-specific impairment that the property might be having". This would require that any additional depreciation adjustment would look at "any site-specific issues or abnormalities that are affecting the equipment". He further opined that the utility of the property can be considered, and that MRAT stipulates following the standards. There is no provision for considering economics in the assessment scheme.

[559] Ms. Sheila Young testified that most of the Applicant's proposed reductions for Schedule D were derived from market value concepts. She testified that "market value concepts don't apply in the regulated process".

[560] Ms. Young also testified that acceptable evidence for Schedule D additional depreciation is restricted to a site-specific application based on the November 2018 Directive and clarification, and that broad general economic conditions are not considered. The rationale behind her interpretation is that M&E receives immediate depreciation of 25%, the assessment is reduced by a further 23% because of the statutory level and the elimination of the education tax on M&E several years ago.

[561] Ms. Young also provided her interpretation as to what criteria must be engaged to apply additional Schedule D depreciation, as follows:

a. Schedule D is applied to the portion of the facility impacted;
b. If the cost is not assessed, it cannot receive additional depreciation;
c. M&E is not assessed at market value; therefore, methods to measure market value depreciation do not apply;
d. The severity and duration of the loss in value must be considered;
e. A one-to-one relationship between a reduction in output and depreciation does not apply;
f. Equity with other similar properties must be considered;
g. Schedule D, if applied, should be reviewed annually to confirm whether continuation is warranted; and
h. Documents supporting a request for Schedule D need to be supplied by the assessed person.

[562] Ms. Young summarized her testimony as follows:

> 63. Additional depreciation is not given for general economic conditions as other property tax policies (CCRG excluded costs, truncated depreciation curve, 77 percent statutory level, and zero education taxes) mitigate general economic conditions. Additional depreciation is given where acceptable evidence is provided, and acceptable evidence focuses on site specific issues. Additional depreciation can be measured by the difference between the actual production of the property, and the typical production. The amount of additional depreciation is not a one-to-one relationship but considers the amount of

> Schedule C depreciation, and the additional depreciation provided to other similar properties.
> 64. Therefore Schedule D depreciation is not given for the machinery and equipment under complaint.

[563] The Thompson Report focused primarily on its perception of the shortfalls in the Kent McPherson Report. Specifically, Dr. Thompson identified limitations in the Kent McPherson Report which included:

a. Small sample size;
b. Impossible Mathematical Condition;
c. Decay in production flow rate as a measurement of value;
d. Comparison of real-time Production Flow Rate (PFR) to design capacity without accounting for natural reservoir decay;
e. The potential use of Engineer's 6/10 Rule in the estimate of a loss in value;
f. Omission of numerical models and calculations or detailed analysis;
g. A Particular Numerical Example; and
h. Marten Hills Plant data.

[564] The Kingston Ross Pasnak Report critiqued the Deloitte Report related to the following matters:

a. The duration of the forecast (50 years) and the inherent uncertainties with such a lengthy duration;
b. The lack of supporting information;
c. The low level of assurance related to the level of valuation; and
d. The lack of historical information.

[565] The Zeiner Report was primarily confined to matters relating to buildings and structures. Mr. Zeiner commented generally on the Kent McPherson Report, as to the approach which combined functional depreciation and economic depreciation and did not separate the numeric calculation. He also critiqued the small sample size.

[566] The Respondent's position was that additional depreciation was only applicable on a site-specific basis, and that general economic conditions and fluctuations in commodity prices do not qualify for additional depreciation.

[567] It was the Respondent's position that the Applicant has failed to provide sufficient evidence to warrant additional depreciation.

Board Findings – Issue 3

[568] The Board previously determined in Issue #2 that additional depreciation could be considered on the following basis:

a. The Board finds that Schedule C includes normal physical and normal functional obsolescence which includes normal economic obsolescence;
b. The Board determined that Schedule D depreciation may be applied under the following conditions:

i. Evidence showing an unforeseen decrease in age life or other factors affecting the appropriate distributions of costs over an asset's age life due to site specific factors;
ii. The loss must be site-specific, permanent or long term, unexpected, affecting financial performance, material, and attributable to abnormal physical, functional, or economic obsolescence. The additional loss in value must not be reflected in Schedule C, and it must be a condition not normally associated with a similar asset; and,
iii. Additional loss in value could include a broad range of criteria, including, but not limited to, catastrophic events and losses relating to unexpected changes in market conditions. Acceptable evidence must involve permanent and unexpected negative impact on the utility, productivity, economic viability, or a reduction of the anticipated useful life of the asset.

c. The purpose behind the regulated scheme is not to guarantee assessment at the lower of market value or Schedule C depreciated value. The replacement of market value with the regulated standard carries advantages to the taxpayer, including a fixed and immediate deduction of 25% at the outset of the asset's life, as well as the 77% statutory factor applied to the value.
d. The Board finds that the assessment value objective for M&E in the regulated scheme is not market value. Market value concepts may be considered to demonstrate any loss in value; however, market value is not a standard for the assessed value.
e. The Board finds that additional depreciation is allowed for functional obsolescence, external obsolescence, locational obsolescence, and economic conditions. All the foregoing must be abnormal and not considered in Schedule C.

[569] In the subject complaint, the Board determines that while additional depreciation may be considered, the Applicant has failed to effectively support a basis for calculating a loss in value, or what the amount of the additional depreciation should be.

Reasons – Issue 3

[570] The Board considered the Applicant's position that the recent low commodity prices are evidence of a loss in value due to economic conditions. The Board also understands the evidence to indicate that commodity prices are not static. The Applicant has provided evidence that recent gas prices have been in the order of $2.00/gj; however, they also presented evidence of historic price levels of $11.00/gj. Commodity prices go up and down, as does the business cycle. The Minister's Guidelines are reviewed annually, such that any industry economics would be considered in the creation of the Minister's Guidelines. The Applicant failed to demonstrate a calculation as to how a loss in value could be determined, and that such a loss in value is permanent or long term in nature.

[571] The Applicant proposed a reduction based on an additional 50% deduction, across the board on M&E. The basis for the proposed 50% deduction was a calculation from the CNRL Rebuttal Report (Exhibit C34). The chart included the assessed value of the assets under complaint broken into "Plants, Compressors, Wells and Other" and applied a percentage of the total assessment to the zone. From that group CNRL selected a sample size and determined a utilization factor – in the case of plants, based on throughput and for compressors, based on horsepower utilization. The calculation was then based on the utilization factor applied to the assessment under complaint, and a proposed assessment value was

calculated. During Mr. Pole's testimony he confirmed that the line item "Wells" should be excluded, and the revised assessments required amendment.

[572] The Board was unable to accept the CNRL proposed reduction as it was not in sufficient detail to allow the Board to review and support the calculations. In addition, the calculation did not accord with the assessed value requested by the Applicant. Mr. Pole confirmed under questioning that he had not provided any support or other backup information to allow for his calculations to be reviewed. The requested calculation simply allows for a deduction of 50% against certain asset categories. This falls well short of providing acceptable evidence of a loss in value. Additionally, the Applicant maintained that the complaint was based on economics and not a throughput issue; however, the CNRL Rebuttal Report noted that the calculation for gas plants was based on throughput.

[573] The Board considered the Deloitte Report. This report was identified by its author to be a market value report. Given that M&E is assessed based on a regulated scheme, market value is not appropriate, and the report is of limited value in determining a request for additional depreciation. The Board also considered that Deloitte LLP used the linear assessment of pipelines as market value, and then reduced the calculated value to arrive at the value for M&E. This is co-mingling different assessment schemes – regulated and market value – to arrive at a market valuation.

[574] The Kent McPherson Report was also considered. The Board found the report began to consider how additional depreciation might be applied. The genesis for the report was that if production level deterioration could be determined, there may be a basis as to how to allocate additional depreciation. The Board accepts the testimony of Dr. Thompson with respect to statistical sampling and the small sample size used by Mr. Beatty. In essence, the Kent McPherson Report relies on three (3) gas plants to establish three ranges of production decline (four levels if considering no change for production decline less than 50%). The Report also applied the proposed reduction to buildings and structures; however, this aspect was abandoned based on the joint recommendation of the parties. After concluding that there was potential for a reduction of either 50%, 65% or 80%, the author determined that it would be difficult to calculate the effect on each asset. As a result, it was recommended that a global 60% global depreciation allowance be applied. As noted, the report started with a reasonable assumption; however, the statistical sample was too small, and the methodology did not reach a conclusion that could be reasonably applied on a site-specific basis. As well, the primary basis of the Applicant's complaint was an economic deterioration and the Kent McPherson report touched on the economic issues; however, relied on a change in production levels to support the report recommendation. Additionally, Mr. Beatty on several occasions referred to his use of "appraiser judgement" as a contributing factor in his assessment. The recommendation fell short of acceptable evidence of a loss in value.

[575] The Board considered the DMA Report; however, it did not provide a methodology, rather it simply stated that it supported a 50% global depreciation allowance. It was therefore of nominal use to the Board.

[576] The Board finds that none of the methodologies advanced by the Applicant demonstrated an unforeseen or abnormal decrease in age life or other factors affecting the appropriate distributions of costs over an asset's age life due to site specific factors.

[577] The Board was not presented with methodologies or acceptable evidence that demonstrated the loss was site-specific, permanent or long term, unexpected, affecting financial performance, material, and

attributable to abnormal physical, functional, or economic obsolescence. There was no clear identification that the additional loss in value was not reflected in Schedule C, and was a condition not normally associated with a similar asset.

[578] A further consideration by the Board as to what would constitute an additional loss in value was that it could include a broad range of criteria, including, but not limited to, catastrophic events and losses relating to unexpected changes in market conditions. To qualify, acceptable evidence must involve permanent and unexpected negative impact on the utility, productivity, economic viability, or a reduction of the anticipated useful life of the asset. This type of evidence was not presented to the Board for consideration.

[579] Finally, the Board notes that the plain reading of the words in Schedule D as well as the legislative intent of Schedule C is that some forms of additional depreciation are allowable and that if evidence of the loss in value can be provided and is measurable, the taxpayer should receive the benefit of it. The Board finds that additional depreciation may be allowed for functional obsolescence, external obsolescence, locational obsolescence, and economic conditions. All the foregoing must be abnormal and not considered in Schedule C. Evidence of this additional depreciation was not provided in sufficient detail for the Board to accept the Applicant's proposed reduction.

DECISION

[580] The assessment is be lowered to the following:

Taxation Year 2018 (2017 Assessment Year)

	Original Assessment	Requested Assessment	Revised Requested Assessment	
Land	$ 6,514,790	$ 6,514,790	$ 6,514,790	(1)
Buildings	$ 29,046,090	$14,523,045	$ 27,604,131	(2)
M&E	$101,368,690	$50,684,345	$101,368,690	(3)
TOTAL	**$136,929,570**	**$64,840,565**	**$135,487,611**	

Taxation Year 2019 (2018 Assessment Year)

	Original Assessment	Requested Assessment	Revised Requested Assessment	
Land	$ 11,945,950	$ 11,945,950	$ 11,945,950	(1)
Buildings	$164,309,360	$ 82,154,680	$144,008,402	(2)
M&E	$621,371,770	$310,685,885	$621,371,770	(3)
TOTAL	**$797,627,080**	**$404,786,515**	**$777,326,122**	

(1) there was no appeal of the land values and the assessment was not altered
(2) the buildings assessment decision was based on mutual agreement
(3) the M&E assessment was not altered

Dated in the City of Edmonton in the Province of Alberta this 15th day of November, 2021.

LAND AND PROPERTY RIGHTS TRIBUNAL

D. Roberts, Member

APPEARANCES

NAME	CAPACITY
G. Ludwig, Q.C.	Wilson Laycraft, Counsel for the Complainant
B. Dell	Wilson Laycraft, Counsel for the Complainant
C. Zukiwski	Reynolds Mirth Richards & Farmer LLP, Counsel for the Provincial Assessor
G. Plester	Brownlee LLP, Counsel for the Intervenors

APPENDIX 1 **List of Properties under Complaint**

Athabasca County	360341100
Athabasca County	361163001
Athabasca County	361243000
Athabasca County	362053100
Athabasca County	362053101
Athabasca County	363304000
Athabasca County	364284100
Athabasca County	364284101
Athabasca County	371304100
Athabasca County	373111100
Athabasca County	373124001
Athabasca County	373131100
Athabasca County	373244100
Athabasca County	374151100
Athabasca County	374213000
Athabasca County	374244000
Athabasca County	377123001
Athabasca County	407251004
Athabasca County	423152001
Athabasca County	423203010
Athabasca County	423211010
Athabasca County	423223007
Athabasca County	423234003
Athabasca County	436242014
Athabasca County	442092011
Athabasca County	442271023
Athabasca County	462023000
Athabasca County	477094017
Athabasca County	477292016
Athabasca County	478264010
Athabasca County	486271021
Athabasca County	496164003
County of Barrhead No. 11	242151005

County of Barrhead No. 11	243301302
Municipal District of Bonnyville No. 87	9600702301
Municipal District of Bonnyville No. 87	9600714401
Municipal District of Bonnyville No. 87	9610920102
Municipal District of Bonnyville No. 87	9620321401
Municipal District of Bonnyville No. 87	9620717301
Municipal District of Bonnyville No. 87	9620806201
Municipal District of Bonnyville No. 87	9620809201
Municipal District of Bonnyville No. 87	9630729101
Municipal District of Bonnyville No. 87	9630807203
Municipal District of Bonnyville No. 87	9630917301
Municipal District of Bonnyville No. 87	9630919201
Municipal District of Bonnyville No. 87	9660504401
Municipal District of Bonnyville No. 87	9660507101
Camrose County	814500
Camrose County	818703
Camrose County	818710
Camrose County	818718
Camrose County	818741
Camrose County	818761
Camrose County	818775
Camrose County	818792
Camrose County	818799
Camrose County	819004
Municipal District of Fairview No. 136	2362
Municipal District of Fairview No. 136	2432
Municipal District of Fairview No. 136	2433
Municipal District of Fairview No. 136	2434
Municipal District of Fairview No. 136	2435
Municipal District of Fairview No. 136	2437
Municipal District of Fairview No. 136	2438
Municipal District of Fairview No. 136	2439
Municipal District of Fairview No. 136	3204
Municipal District of Fairview No. 136	3356
Municipal District of Fairview No. 136	3357

Municipal District of Fairview No. 136	3359
Municipal District of Fairview No. 136	3368
Municipal District of Fairview No. 136	3426
Flagstaff County	802230
Foothills County	2026309500
Foothills County	2026352000
Foothills County	2027262000
Foothills County	2027267000
Foothills County	2126059500
Foothills County	2126214500
County of Forty Mile No. 8	10062419
County of Forty Mile No. 8	11060349
County of Forty Mile No. 8	12053439
County of Forty Mile No. 8	811334016
County of Grande Prairie No. 1	173500
County of Grande Prairie No. 1	264600
County of Grande Prairie No. 1	1196000
County of Grande Prairie No. 1	1251300
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County of Grande Prairie No. 1	1303900
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Special Areas Board	80069
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Kneehill County	29221220400
Kneehill County	30242320400

Kneehill County	33232231400
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Kneehill County	34261610200
Lac Ste. Anne County	2158
Lac Ste. Anne County	2236
Lac Ste. Anne County	2281
Lacombe County	3926106041
Lamont County	12666000
County of Minburn No. 27	870300
County of Minburn No. 27	876700
County of Minburn No. 27	884100
County of Minburn No. 27	904500
County of Newell	10901
County of Newell	279401
County of Newell	322701
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County of Newell	6085000
County of Newell	6085016
County of Newell	6097700
County of Paintearth No. 18	70005760
Ponoka County	7288

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Red Deer County	202020002
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Red Deer County	202195190
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Red Deer County	478362028
Smoky Lake County	13581141
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Smoky Lake County	18621121
County of St. Paul No. 19	8730701
County of St. Paul No. 19	9618101
County of St. Paul No. 19	10624501

County of St. Paul No. 19	10816302
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Starland County	40335014
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Starland County	48119001
Starland County	48304010
Starland County	48819011
Starland County	48821008
Starland County	49021006
Starland County	49032008
County of Stettler No. 6	796093
County of Stettler No. 6	796107
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County of Stettler No. 6	796282
County of Stettler No. 6	796488
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County of Stettler No. 6	799473
County of Stettler No. 6	799820
County of Stettler No. 6	799986
Sturgeon County	210000
Municipal District of Taber	9002033
Municipal District of Taber	9002034
Municipal District of Taber	9002036
Municipal District of Taber	9004610
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Municipal District of Taber	9023008
Municipal District of Taber	9611400
Municipal District of Taber	9800240
Municipal District of Taber	20030150
Municipal District of Taber	20030165
Municipal District of Taber	20030265
Municipal District of Taber	20040530
Municipal District of Taber	20050410
Municipal District of Taber	2011000009
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Thorhild County	801033072
Thorhild County	802011106
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Thorhild County	882091107
Thorhild County	882341093
Thorhild County	891323076
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Thorhild County	892053018
County of Two Hills No. 21	217700
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County of Two Hills No. 21	623100
County of Two Hills No. 21	836104
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County of Two Hills No. 21	862600
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County of Two Hills No. 21	882400
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County of Two Hills No. 21	903000
County of Vermilion River	654360115
County of Vermilion River	992511203
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County of Vermilion River	995511707
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County of Vermilion River	997513202
Vulcan County	191831221
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Municipal District of Wainwright No. 61	61540002
Municipal District of Wainwright No. 61	75750001
Municipal District of Wainwright No. 61	75750042
Municipal District of Wainwright No. 61	75750048
County of Warner No. 5	809600
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Westlock County	441333022
Westlock County	454033028
Westlock County	470031110
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Westlock County	521081016
Westlock County	521291021
Westlock County	524111116
County of Wetaskiwin No. 10	600500
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Wheatland County	917528100
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Wheatland County	919612141
Wheatland County	920623080
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Municipal District of Willow Creek No. 26	1115.006
Municipal District of Willow Creek No. 26	2591.5

Municipal District of Willow Creek No. 26	2933.6
Municipal District of Willow Creek No. 26	3241.6
Municipal District of Willow Creek No. 26	3974.6
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Municipal District of Willow Creek No. 26	4183.006
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Municipal District of Greenview No. 16	315021
Municipal District of Greenview No. 16	315543
Municipal District of Greenview No. 16	315600
Municipal District of Greenview No. 16	315643
Municipal District of Greenview No. 16	315653
Municipal District of Greenview No. 16	315654
Municipal District of Greenview No. 16	316102
Municipal District of Greenview No. 16	316104
Municipal District of Greenview No. 16	316229

Municipal District of Greenview No. 16	316232
Municipal District of Greenview No. 16	316254
Municipal District of Greenview No. 16	316575
Municipal District of Greenview No. 16	316677
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Municipal District of Greenview No. 16	317111
Municipal District of Greenview No. 16	317586
Municipal District of Greenview No. 16	317689
Municipal District of Greenview No. 16	317961
Municipal District of Greenview No. 16	317964
Municipal District of Greenview No. 16	320370
Municipal District of Greenview No. 16	320517
Municipal District of Greenview No. 16	320529
Municipal District of Greenview No. 16	321067
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Yellowhead County	234178
Yellowhead County	292964
Yellowhead County	295211
Yellowhead County	305589
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Yellowhead County	500292
Yellowhead County	500482
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Yellowhead County	500775
Yellowhead County	501082
Yellowhead County	501342
Yellowhead County	501491
Yellowhead County	501689
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Yellowhead County	503028

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Yellowhead County	506150
Yellowhead County	506186
Yellowhead County	506431
Yellowhead County	506514
Yellowhead County	506754
Yellowhead County	506919
Yellowhead County	507043
Yellowhead County	507104
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Northern Sunrise County	313362
Northern Sunrise County	313371
Northern Sunrise County	313373
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Northern Sunrise County	313502
Northern Sunrise County	313531
Northern Sunrise County	313718
Northern Sunrise County	314142
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Northern Sunrise County	314360
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Northern Sunrise County	315302
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Clear Hills County	316737
Mackenzie County	410674
Mackenzie County	410676
Mackenzie County	410677
Mackenzie County	410760
Mackenzie County	411269
Municipal District of Lesser Slave River No. 124	108347
Municipal District of Lesser Slave River No. 124	188686
Municipal District of Lesser Slave River No. 124	199057
Municipal District of Lesser Slave River No. 124	199098
Municipal District of Lesser Slave River No. 124	215583
Municipal District of Lesser Slave River No. 124	215620
Municipal District of Lesser Slave River No. 124	221240
Municipal District of Lesser Slave River No. 124	296824
Municipal District of Lesser Slave River No. 124	301262
Municipal District of Lesser Slave River No. 124	302710
Municipal District of Lesser Slave River No. 124	302723
Municipal District of Lesser Slave River No. 124	315898

Municipal District of Lesser Slave River No. 124	324209
Municipal District of Lesser Slave River No. 124	324649
Municipal District of Lesser Slave River No. 124	324844
Municipal District of Lesser Slave River No. 124	325631
Municipal District of Lesser Slave River No. 124	326586
Municipal District of Lesser Slave River No. 124	326754
Municipal District of Lesser Slave River No. 124	326846
Municipal District of Lesser Slave River No. 124	327203
Municipal District of Lesser Slave River No. 124	327224
Municipal District of Lesser Slave River No. 124	327348
Municipal District of Lesser Slave River No. 124	327420
Municipal District of Lesser Slave River No. 124	327634
County of Northern Lights	203386
County of Northern Lights	227051
County of Northern Lights	307262
County of Northern Lights	312243
County of Northern Lights	312333
County of Northern Lights	312340
County of Northern Lights	312364
County of Northern Lights	312427
County of Northern Lights	312551
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County of Northern Lights	313130
County of Northern Lights	313197
County of Northern Lights	313250
County of Northern Lights	313613
County of Northern Lights	313876
County of Northern Lights	313878
Municipal District of Opportunity No. 17	194007
Municipal District of Opportunity No. 17	194023
Municipal District of Opportunity No. 17	206058
Municipal District of Opportunity No. 17	206071
Municipal District of Opportunity No. 17	210085

Municipal District of Opportunity No. 17	221324
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Municipal District of Opportunity No. 17	231080
Municipal District of Opportunity No. 17	231172
Municipal District of Opportunity No. 17	231207
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Municipal District of Opportunity No. 17	231219
Municipal District of Opportunity No. 17	231277
Municipal District of Opportunity No. 17	231451
Municipal District of Opportunity No. 17	231746
Municipal District of Opportunity No. 17	231761
Municipal District of Opportunity No. 17	231834
Municipal District of Opportunity No. 17	231835
Municipal District of Opportunity No. 17	231880
Municipal District of Opportunity No. 17	231903
Municipal District of Opportunity No. 17	232022
Municipal District of Opportunity No. 17	232176
Municipal District of Opportunity No. 17	232193
Municipal District of Opportunity No. 17	232379
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Municipal District of Opportunity No. 17	233221
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Municipal District of Opportunity No. 17	311368
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Municipal District of Opportunity No. 17	314640
Municipal District of Opportunity No. 17	314646
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Municipal District of Opportunity No. 17	317281
Municipal District of Opportunity No. 17	317348
Municipal District of Opportunity No. 17	318125
Municipal District of Opportunity No. 17	318132
Town of Drumheller	21004601
Town of Drumheller	21011705
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Lac La Biche County	9701327201
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Lac La Biche County	9791423201
Lac La Biche County	9791436301
Lac La Biche County	9801401401
Improvement District No. 349	9680306101
Improvement District No. 349	9680331401
Improvement District No. 349	9680413301

APPENDIX 2 – CNRL Exhibit List

Exhibit List	Exhibit #	Pages
Complainant's Brief- October 25	C1	377
Complainant's Volume of Documents	C2	168
CNRL Report, David Pole Redacted	C3	348
CNRL Report, David Pole Unredacted	C3.1	350
DMA Submission	C4	215
Deloitte Report 2017 Redacted	C5	16
Deloitte Report 2017 Unredacted	C5.1	42
Deloitte Report 2018 Redacted	C6	18
Deloitte Report 2018 Unredacted	C6.1	55
Kent MacPherson Consulting Report	C7	110
Respondent's Legal Argument	R8	46
Respondent's Volume of Authorities and Documents, Part 1	R9	318
Respondent's Volume of Authorities and Documents, Part 2	R10	242
Respondent's Volume of Legislation	R11	261
Witness Report of Dennis Klem	R12	40
Witness Report of Dr. Edward Thompson	R13	135
Expanded Bio for Dr. Thompson	R13.1	3
Witness Report of Grant Clark	R14	53
Witness of Kevin Zeiner	R15	15
Witness of Michael Minard	R16	95
Witness Report Of Randy Popik	R17	178
Witness Report of Ray Fortin	R18	97
Witness Report of Sheila Young	R19	28
Joint Legal Brief of the Intervenors, MD of Opportunity No. 17 and Northern Sunrise County	I20	124
CNRL Rebuttal and Authorities	C31	305
Allan Beatty Rebuttal Report	C32	19
Beatty Answers	C32.1	252
DMA Rebuttal Report	C33	43
David Pole Rebuttal Report	C34	14
Rob Koller (Deloitte) Rebuttal Report	C35	15
Respondent's Legal Brief- Preliminary Hearing	R36	27
Respondent's Volume of Authorities- Preliminary Hearing	R37	155
Complainant's Rebuttal; Brief and Authorities- Preliminary Hearing	C38	111
September 16 Wilson Laycraft letter response to panel direction	C39	3
September 16 Respondent Legal Brief re Improper sub-delegation	R40	5

DL 041-20	B41	2
Letter date July 10- role of Intervenor	I42	1
Email clarification on municipalities represented by Brownlee	I42.1	2
Confidentiality Undertaking of Dr. Edward Thompson	R21	3
Confidentiality Undertaking of Kevin Zeiner (unwitnessed)	R22	3
Confidentiality Undertaking of Mike Minard	R23	2
Confidentiality Undertaking of Randy Popik	R24	3
Confidentiality Undertaking of Sheila Young	R25	3
Confidentiality Undertaking of Aiden Caouette	R26	3
Confidentiality Undertaking of Justin Lamb	R27	3
Confidentiality Undertaking of Mark Jones	R28	3
Confidentiality Undertaking of John P Saldarelli (unwitnessed)	R29	1
Confidentiality Undertaking of Aaron Slotsve	R30	2
Confidentiality Agreement Michael Georgeson (unwitnessed)	R48	3
Confidentiality Undertaking of Arla Pirtle (unwitnessed)	R49	3
Confidentiality Undertaking of Brad Hurt (unwitnessed)	R50	3
Confidentiality Undertaking of Darcy Geseron	R51	3
Confidentiality Undertaking of Grace Zhao	R52	3
Confidentiality Undertaking of Melanie Wong	R53	3
Confidentiality Undertaking of Ryan Mastel	R54	3
Confidentiality Undertaking of Sarah Howitt	R55	1
Confidentiality Undertaking of Tally Quaschnick (unwitnessed)	R56	3
Confidentiality Undertaking of Janice Romanyshyn	R57	3
Confidentiality Undertaking of Smyl	R58	3
Confidentiality Protocol	C43	3
October 22, 2020 letter re: preliminary qualification of experts (Thompson)	C44	2
November 12, 2020 Response to October 22, 2020 letter	R45	5
Joint Recommendation on Buildings, dated April 30, 2020	R46	24
David Pole Power Point Presentation	C47	52
Hinton Pulp Mill email 1	R59	4
Hinton Pulp Mill email 2	R60	3
Hinton Pulp Mill email 3	C61	1
Alberta (Municipal Affairs Linear Assessor) v. Apache	C62	67
Appraisal Institute Statistics for Appraisers	R63	20
Board Depreciation Adjustment (BS and ME)	C64	27
Lamont Health Care Centre v Delnor Construction	R65	5
Penn West Petroleum Ltd. v DLA	R66	25
St. John v. Irving	C67	3

R v. Lavallee	R68	49
Assessment Bulletin: October 2020	R69	3
TransAlta Generation Partnership v. Regina, 2021 ABQB 37	R70	22

APPENDIX 3 – Preliminary and Other Procedural Issues

Preliminary issues 1 through 5 were raised at preliminary hearings scheduled well before the merit hearing. The Board issued rulings for preliminary issues 1 – 4, and advised it would provide further reasons along with its written decision on the merits. With the Parties agreement, it reserved its ruling on preliminary issue 5 until the merit hearing. The rest of the preliminary issues discussed below were raised at or immediately prior to the merit hearing on Nov 18.

Issue #1 – Request to Limit Intervenor Status

[1] The Applicant requested the Intervenor's status be limited to that of its written submissions as filed.

Respondent's Position – Intervenor (Northern Sunrise and Municipal District of Sunrise)

[2] The Intervenor did not provide any additional briefs for the preliminary hearings and observed the first preliminary hearing without comment.

[3] At the second preliminary hearing, Counsel for the Intervenor confirmed that the Applicant, Respondent, and Intervenor had mutually agreed on the role of the Intervenor. Both the Applicant and Respondent confirmed this agreement.

Board Decision

[4] The Parties agreed that the Intervenor would not be filing briefs with respect to the preliminary matters. The Parties, and the Intervenor, agreed that Counsel for the Intervenor would make an opening statement and closing argument on behalf of the Municipal District of Opportunity No. 17 and Northern Sunrise County (the Municipalities). In addition, Counsel for the Intervenor will put any cross-examination questions through Counsel for the Respondent and will not cross-examine witnesses separately. A copy of a letter from Counsel for the Municipalities is referenced as Exhibit I42.

Issue #2 – Confidential Information

[5] The Applicant advised that certain documents include confidential information and requested the documents be "sealed". The documents are referred to in the Exhibit List as follows:

a. CNRL Report, David Pole Unredacted (Exhibit C3.1)
b. Deloitte Report Unredacted (Exhibit C5.1)
c. Deloitte Report Unredacted (Exhibit C6.1)

Applicant's Position

[6] The Applicant also confirmed that the Parties had agreed to the form of a Confidentiality Agreement with respect to certain documents deemed to include confidential business information.

Respondent's Position

[7] The Respondent accepted the Applicant's request and confirmed that the form of the Confidentiality Agreement has been mutually consented to. The agreement details what is redacted or not redacted, how evidence is given, deals with the participants and how the transcript will be marked. As well, the agreement will discuss how the confidential information will be dealt with in the event of a judicial review of the Board decision.

Board Decision

[8] The Parties accepted the form of a Confidentiality Agreement concerning certain documents. The Board reviewed the proposed document, and the Board decision is addressed under Issue #1 within the merit decision. A copy of the form of the Confidentiality Agreement is referenced as Exhibit C43.

Issue #3 – Joint Recommendation to Amend Building and Structures Assessment

[9] The Parties advised they had come to a mutual agreement to amend the assessed value of certain buildings and structures assessed by the Provincial Assessor. A recommendation was made to the Board to accept the proposed changes to the assessed value of those buildings and structures (Exhibit R46).

Applicant's Position

[10] The Applicant confirmed that the Parties have agreed to make a recommendation to the Board to amend the assessed values of certain properties buildings and structures. The proposed changes are detailed in Exhibit C32.1. The Applicant requests that the Board adopt the recommendation at the time it issues its decision for the merit portion of the hearing.

Respondent's Position

[11] The Respondent testified that there was general mutual agreement with the Applicant on most of the buildings and structures within the properties under assessment, and that a joint recommendation would be provided to the Board.

[12] The Respondent prepared a summary of the recommendations and provided a copy to the Board (Exhibit R46).

Board Decision

[13] The Applicant provided a copy of proposed amendments to certain assessments of buildings and structures. The Board reviewed the proposed changes, and the Board's determination is discussed within Issue 1 of the merit decision. This information is included in as Exhibit R46.

Issue #4 – Striking Reports of Dr. Edward Thompson and Ms. Sheila Young

[14] The Applicant initially requested to strike, either in whole or in part, the reports of Dr. Edward Thompson (Exhibit R13) and Ms. Sheila Young (Exhibit R19).

[15] The parties mutually agreed that the report of Ms. Young was the report of a fact witness, and not that of an expert witness and the Applicant withdrew the request to strike Ms. Young's report.

Applicant's Position

[16] The Applicant requested the Board strike the report of Dr. Thompson (Thompson Report Exhibit R13), either in whole or in part.

[17] The Applicant's position was that while it respected the Board's broad powers with respect to the admissibility of evidence, the principles behind the admitting of expert testimony offer important guidance.

[18] In the case of the Thompson Report, the Applicant argued that an opinion on an appraisal report offered by a mechanical engineer with expertise in statistical data is neither relevant to the process nor of assistance to the Board in its decision making.

[19] The Applicant referred the Board to *R. v Mohan, [1994], 2 S.C.R. 9* (*Mohan*) as well as *White Burgess Langille Inman v. Abbott and Haliburton Co., [2015] S.C.J. No. 23* (*White Burgess*). The Applicant noted that *White Burgess* is considered the leading case on the admissibility of expert testimony.

[20] The Applicant's position as to whether expert evidence should be admitted is a two-step process. The first step (*Mohan* and *White Burgess*) is to consider four basic elements to be satisfied prior to admitting expert evidence. Those elements are:

a. Relevance;
b. Necessary and not just helpful;
c. Not subject to any exclusionary rule; and
d. From a properly qualified individual.

[21] In furtherance of the four elements the Applicant provided further clarification as to the requirement of each:

- Relevance requires both logical relevance and legal relevance. Logical relevance goes to whether the evidence relates to a fact in issue; whereas legal relevance is the impact the evidence may have on the trial process. Although evidence may be logically of value, it can be excluded if there is a prejudicial effect. The Applicant suggests that the relevance test would fail where evidence:
    - Might be misused and distort the fact-finding process;
    - Is dressed up in scientific language, not easily understandable and delivered through a witness of impressive antecedents such that the evidence might be considered infallible;
    - Is likely to confuse or confound the fact finding; or
    - May overwhelm the fact finder by its "mystic infallibility".
    (*Mohan* (para 18-20) and *R. v. Jacobs [2014] AJ No 544 (CA)* (para 55) (*Jacobs*))
- Necessity requires that the expert opinion evidence must be assessed considering the other evidence available. If there is sufficient factual evidence to determine an issue, then opinion evidence is not necessary. *Freyberg v. Fletcher Challenge Oil and Gas Inc.,* [2005] A.J. No. 108 (para 85 to 87), *Mohan* (para 23), *R. v. D.D.,* [2000] 2 S.C.R. ***275*** (para 59) quoting Lawton L.J. in *R. v. Turner, [1975] Q.B. 834,* at p.841, and approved by Lord Wilberforce in *Director of Public Prosecutions v. Jordan, [1977] A.C. 699,* at p.718. Expert evidence is admissible to assist the adjudicator in dealing with scientific or technical evidence which is outside the adjudicator's area of expertise or knowledge. However, the Applicant contends that expert evidence is not necessary if the issue can be determined without it.
- Absence of Exclusionary Rule does not come into play in this matter.
- Properly Qualified Individual requires the expert to be confined to matters within the expert's area of expertise. If experts opine outside their area of expertise, then the evidence should be inadmissible, or no weight be assigned to it. (*Jacobs* at paras. 52-54 and 65)

[22] The Applicant stated the second step in determining whether to admit expert witness testimony involves the gatekeeping function of the adjudicator. The Applicant considers that the adjudicator must examine the potential risks and benefits to determine if the benefits justify the risks. (*White Burgess* paras. 23-24)

[23] The Applicant addressed the question of whether evidence should be ruled inadmissible rather than admitted and then given little weight, noting *White Burgess* (para. 45) addresses this question as does *Jacobs* (para. 69). *White Burgess* says:

> 45 Following what I take to be the dominant view in the Canadian cases, I would hold that an expert's lack of independence and impartiality goes to the admissibility of the evidence in addition to being considered in relation to the weight to be given to the evidence if admitted. That approach seems to me to be more in line with the basic structure of our law relating to expert evidence and with the importance our jurisprudence has attached to the gatekeeping role of trial judges. Binnie J. summed up the Canadian approach well in J.-L.J.: "The admissibility of the expert evidence should be scrutinized at the time it is proffered, and not allowed too easy an entry on the basis that all frailties could go at the end of the day to weight rather than admissibility" (para. 28)" (emphasis added).

[24] The Applicant also maintained that the expert must be independent, as discussed in *P.W. v. Persons With Development Disabilities Appeal Panel, [2011] A.J. No. 1106* (para. 66), *Carmen Alfano Family Trust (Trustee of) v. Piersanti, [2012] O.J .No. 2042* (Ont CA) (Alfonso) (paras. 100, 108, 112, 115, 116, 118 and 120) and *Gould v. Western Coal Corp*., [2012] O.J. No. 4291 (*Gould*) (paras. 94-95). While the matter of lack of independence could go to weight, another option would be for the report to be excluded in its entirety.

[25] The Applicant considers it has the responsibility to challenge admissibility; however, it need only demonstrate a realistic concern that the expert's evidence should not be received. The burden to establish admissibility then falls to the party proposing the expert. (*White Burgess* paras. 47-48**)**

[26] The Applicant opined there are inherent dangers in expert testimony, and cited *R. v. Doonanco [2019] A.J. No 395* (*Doonanco*), which also referred to *White Burgess* and stated:

> 177 The modern view is that expert opinion evidence requires at least as much close evaluation as any other evidence in light of (a) its capacity to dazzle and/or distract the fact finders, (b) its risk for infection of the reasoning process of the fact finders by its being grounded in partisanship, irrelevant considerations, expert non-qualifications or pseudo-science, (c) its potential to cause a trial to bloat or get sidelined on collateral or peripheral matters and (d) by its tendency to intrude on the role of the fact finders: see *White Burgess Langille Inman v. Abbott and Haliburton Company,* 2015 SCC 23 at paras 11 – 18, [2015] 2 SCR 182…

[27] The Applicant also stated that concerns about independence and impartiality go to admissibility, rather than to weight. In *White Burgess* (para. 40) it was concluded:

> 40 I conclude that the dominant approach in Canadian common law is to treat independence and impartiality as bearing not just on the weight but also on the admissibility of the evidence…

[28] It is the Applicant's position that the Thompson report is not relevant, not necessary, not from a properly qualified person and delves into areas which are the Board's discretion. A key issue in the subject

application is the quantification of additional depreciation allowed under Schedule "D" of the 2019 Alberta Machinery & Equipment Assessment Minister's Guidelines.

[29] The Applicant contends that the Thompson report attacks the Kent McPherson Consulting Report (Exhibit C7), an appraisal report authored by Mr. D. Allan Beatty (Kent McPherson Report). It argues that the Thompson report "appears to be unrelated to valuation" and Dr. Thompson is not qualified to speak to appraisal methodology. The Applicant considers the Thompson report does not address the loss in economic value, which the Applicant states is the crux of its argument and addressed by the Kent McPherson Report. Rather, the Applicant asserts the Thompson report unnecessarily delves into statistical data and the production levels of certain assets.

[30] The Applicant provided an extensive list of statements (Exhibit C31 page 14 para. 39) where it considers that Dr. Thompson strayed into the role of an advocate. The Applicant's position is that an expert who takes on an advocacy role cannot be viewed as impartial, and the opinion would not be admissible. (*White Burgess* (para 37), *Alfanso* (paras. 115, 116 and 120) and *Gould* (paras. 94-95).

[31] The Applicant also provided *Atco Electric Ltd. v. Canada, [2017] T.C.J. No. 152* (*Atco*) where an expert report was excluded because the Court determined that "…it is the responsibility of the judge, not of an expert, to interpret the Act and to give the words that are used therein their rightful meaning." In *Atco,* the report was excluded as the Court found that the expert report advocated on the ultimate issue.

[32] The Applicant further contends that the Thompson Report is exactly what the Courts have cautioned against as unnecessary evidence dressed in scientific/mathematical language.

[33] The Applicant also notes that the Respondent has placed emphasis on Dr. Thompson's prior role as a member of the MGB and its predecessor. Accordingly, there is a danger that this Board may have the perception that he is providing expert advice when he opines on the "sufficiency of evidence".

[34] The Applicant referred to the list of references provided in the Thompson Report (Exhibit R13 page 27) and notes that of the extensive list of references, only one (1) relates to appraisal (point 9). The Applicant further submitted that while this reference may be relevant, it is not appropriate for a mechanical engineer to comment on an appraisal report.

[35] While it has not been provided with the terms of engagement for Dr. Thompson, the Applicant considers that there may have been a delegation of responsibility by the Provincial Assessor to Dr. Thompson. It opined that the Provincial Assessor cannot delegate its responsibility to establish an assessment to a third party (C38 para. 22).

[36] In summary, the Applicant considers the following as rationale to exclude the Thompson report from evidence:

a. The report fails the *Mohan* test – it is not relevant, not necessary, and the opinion exceeds the boundaries of Dr. Thompson's area of expertise;
b. The Board is equally or better placed to interpret whether there is a loss in value of the properties without Dr. Thompson's evidence;
c. Dr. Thompson provides his opinion on the ultimate issue and advocates for the Provincial Assessor;
d. The risk in entering the evidence far outweighs any benefits; and
e. If the report is entered, it should be assigned little if any weight. The gatekeeper role of the Board requires it to address admissibility at the outset, and to ensure inadmissible evidence is not introduced later in the hearing.

[37] The Applicant disagrees with the Respondent's claim that the Kent McPherson Report makes engineering comments. It argues the Respondent is making this claim as a means of allowing Dr. Thompson to comment on the Kent McPherson Report, since appraisal is not an area of Dr. Thompson's expertise.

[38] The Applicant conceded the bar for allowing expert testimony is low on independence and impartiality, as determined in *White Burgess*; however, it contended the gatekeeping function requires the Board to reflect on relevance, necessity, expert qualifications, and advocacy of the expert when making its decision.

[39] The Applicant also questioned whether the Respondent could object to the admissibility of the Applicant's evidence when there nothing in the Respondent's disclosure concerning this issue. To bring the matter up after the Applicant's rebuttal is inappropriate and contrary to *Matters Relating to Assessment Complaints Regulation* (MRAC 2018).

[40] The Applicant agreed to the qualification of Dr. Thompson as a mechanical engineer as well as his knowledge of numeric modelling and statistical testing, but reserved the right to assert that Dr. Thompson's engagement was to provide assessment and policy advice to the Provincial Assessor. To this end, it requested Counsel for the Respondent to provide:

a. the date Dr. Thompson was retained by the Provincial Assessor, and
b. advice as to the terms of Dr. Thompson's engagement – or what he had been requested to provide to the Provincial Assessor.

[41] Receipt of this information would help the Applicant determine whether to pursue its position that Dr. Thompson's engagement constitutes a delegation of authority from the Provincial Assessor.

Respondent's Position

[42] The Respondent agreed the *White Burgess* is the leading decision on expert witness testimony, but argued this decision provides a low threshold for the admission of expert testimony, and there are few instances where such testimony would not be admissible.

[43] Notwithstanding the decisions used by the Applicant to support its position, the Respondent notes that the *Municipal Government Act* (MGA) s. 496(1) establishes the Board is not bound by the rules of evidence and can determine both the admissibility and weight. The Respondent noted all of the Applicant's authorities concern bodies that must follow the rules of evidence, and the Board is not bound by those rules or decisions.

[44] The Respondent noted the Kent McPherson Report looks at three properties, establishes one of them as representative of a "zone", arrives at three zones and then extrapolates the value the author determines to 493 properties in 2017, and 1,129 properties in 2018. The Respondent offers the Thompson Report in rebuttal to the statistical analysis, modeling and sample size included in the Kent McPherson Report. It argues that Dr. Thompson's analysis of these components is "both relevant and necessary" for the Board to consider.

[45] In addition, the Kent McPherson Report delves into production capacity and a concept referred to as the engineer's "six/tenth rule". It is the Respondent's position that both production matters and the engineer's rule are within the realm of Dr. Thompson's background and expertise.

[46] In response to the Applicant's position that a mechanical engineer cannot give expert evidence about an appraisal report, the Respondent notes that the Applicant has not put forward an engineering report,

yet the Kent McPherson Report goes into engineering considerations. Accordingly, it has chosen to have Dr. Thompson respond to the engineering considerations included in the Kent McPherson Report. The Respondent also takes issue with the Applicant's use of the term "pseudo-science", and assured the Board that the mathematics of statistical sampling is not fake science.

[47] The Respondent did not agree that the Thompson Report delves into decision making or advocacy. With respect to the past work of Dr. Thompson on the MGB and its predecessor, the Respondent noted this was simply on his *curriculum vitae* and was not meant to support his being qualified as an expert witness, nor to attempt to sway the Board.

[48] The Respondent also noted that many of the Applicant's expert reports contain advocacy statements, which is the same thing the Thompson Report is accused of doing. These include a number of instances in the Kent McPherson Report as well as in the CNRL Report (Exhibit C3.1), the DMA Rebuttal Submission (Exhibit C33), and the CNRL Rebuttal Report (Exhibit C34).

[49] The Respondent provided the Board with *R. v Soni*, 2016 ABCA 231 wherein the Court determined an expert does not lose objectivity simply because he has an opinion and that an expert report without opinions has no probative value. It is expected that an expert will challenge information that is considered incorrect or not factual.

[50] The Respondent also noted that all the expert reports offered by the Respondent had undertakings whereby the experts acknowledged their duty to provide expert testimony ahead of any obligation they had to the Provincial Assessor. It was the Respondent's opinion that the expert testimony provided was necessary to present its case to the Board.

[51] The Respondent argued the facts in *Gould* are different from the current circumstances, since the evidence in *Gould* included statements as to the motive of other parties and took extreme positions outside the area of expertise. Similarly, in *Alfonso* the expert went well outside the bounds of their area of expertise and advanced theories that were reported to be concocted by one of the parties.

[52] In contrast, the Thompson Report has no egregious statements, no advocacy of the Provincial Assessor's position and does not address whether additional depreciation under Schedule "D" was appropriate. The Thompson Report addresses the statistical sampling and production engineering introduced by the Kent McPherson Report, both being areas in which Dr. Thompson is professionally qualified.

[53] The Respondent referred to the Kent McPherson Report and identified statements that could be considered engineering comments. The Respondent asserted that many aspects of the Thompson Report being challenged are like issues raised by the Applicant's expert witnesses.

[54] The Respondent disagreed with the Applicant's suggestion that the Provincial Assessor has delegated its authority to Dr. Thompson. Further, it argued the Applicant should have raised this issue in its evidence in chief, and not at the end of its rebuttal report (Exhibit C38).

[55] In summary, the Respondent's position is that the Thompson Report deals with matters of good practice, and relates directly to statistical analysis and production matters, which are well within Dr. Thompson's expertise. The threshold in *White Burgess* concerning the admissibility of expert testimony is low. The Report contains relevant evidence for the Board's consideration and should be admitted.

[56] The Respondent agreed to the expert qualification of Mr. Allan Beatty (Kent MacPherson Consulting) as to both market value and regulated assessment regimes - specifically, on depreciation

evaluation used to determine the cost approach in valuation and quantifying losses in value in the cost approach to assessed value. It also agreed Mr. Matt Pierson (Ducharme, McMillen & Associates Canada Ltd.) is qualified as an expert on industrial assessment matters in Alberta.

[57] The Respondent confirmed it will consider any written requests from the Applicant concerning the engagement of Dr. Thompson and will provide its written response.

Board Decision

[58] In respect of the Applicant's request to strike, either in whole or in part, the report of Dr. Thompson (Exhibit R13), the Board declines to strike any portion of the report of Dr. Thompson. The Board will consider the appropriate weight to apply to the report.

[59] The Applicant did not further its position with respect to whether Dr. Thompson's engagement was perceived as a delegation of authority by the Provincial Assessor; therefore, the Board is not required to make any determination of this position.

[60] The Parties agreed that the report of Ms. Young was that of a fact witness and not expert testimony.

Board Finding of Fact and Reasons for Decision

[61] The Board is not bound by the rules of evidence, but appreciates the parties' explanation as to the relevant concepts - particularly the Applicant's position as to the four elements that support admission of expert testimony, as outlined in paragraph 28 of this decision. Three of those elements relate to Dr. Thompson's evidence – briefly, whether the testimony was relevant, necessary, and was from a properly qualified individual.

[62] The Board's verbal ruling at the time of the hearing was to reject striking any portion of Dr. Thompson's report and to apply the appropriate weight to the testimony that the Board saw fit.

[63] The Parties agreed that Dr. Edward Thompson, Ph.D., DIC., P.Eng is qualified as a mechanical engineer, to provide expert evidence on the numerical analysis of production rates, numerical modelling, design parameters for gas plants, best practices for representative sampling, and the use of the engineer's six tenth rule.

[64] Dr. Thompson's credentials as a professional engineer were not in dispute. The Applicant submitted that he was not qualified to give evidence in respect of an appraisal report prepared by Mr. D. Allan Beatty (Kent McPherson Report and Rebuttal). The Board finds that Dr. Thompson did not address the appraisal report as such. It was his testimony, based on his experience as a professional engineer, that the concept of statistical sampling could raise issues with the Kent McPherson Report. The Board found this to be expert testimony that was of benefit for the Board's consideration and was within the boundaries of the matters in which he was qualified as an expert.

[65] The Applicant also raised an issue that the Respondent's reference to Dr. Thompson as being a former Board member was not relevant. The Board agrees and did not consider Dr. Thompson's former Board appointment in determining his ability to provide expert testimony.

[66] The Applicant raised an issue as to whether Dr. Thompson overstepped his role as an expert witness and was advocating for the Respondent. The Board found that Dr. Thompson's testimony was largely confined to that of an expert witness. To the extent that there was advocacy, the Board applied little weight to his advocation.

[67] The Board also considered the Applicant's volumes of case law, and the Board acknowledged the cases; however, as previously noted, this Board is not bound by the Court rules of evidence and has its own ability to determine whether to accept evidence. Thus, while the Board appreciates the case law provided by the parties and their underlying principles, these cases do not apply strictly to the Board or its ultimate decision to allow the expert testimony of Dr. Thompson.

[68] The Applicant's position was that Dr. Thompson's report is not relevant, not necessary, not from a properly qualified person and delves into areas which are the Board's discretion. The Board disagrees and finds that responses in Dr. Thompson's report provided greater clarity of issues raised in the Kent McPherson Report as well as aspects of the CNRL Report. He was qualified as an expert and as such his report was beneficial. The Board is also aware of its role in the decision-making process, and Dr. Thompson's report did not unduly influence that process.

Issue #5 – Striking a Portion of the CNRL Rebuttal Report

[69] The Respondent objected to Section 5 of the CNRL Rebuttal Report (Exhibit C 34) at a preliminary hearing. The section is entitled "Economics and Property Tax" and includes three paragraphs and three charts. With the parties' agreement, the Board advised it would defer its ruling on this question until the merit hearing. Therefore, unlike the other preliminary issues discussed above, the ruling on this issue was not delivered until the merit hearing.

Summary of Respondent's Position

[70] The Respondent submitted that the inclusion of the stated section of the report was not addressed in the Applicant's initial report, nor had the Respondent included this form of material in the Respondent's filings. There is no reference to economics within the Applicant's original disclosure prior to being in the CNRL Rebuttal Report. Therefore, to include it in the CNRL rebuttal represents new evidence, outside the scope of rebuttal testimony.

Summary of Applicant's Position

[71] The Applicant's position was that the information was in response to information in the Respondent's evidence and specifically in the Young Report at paragraphs 29, 46, 58 and 63.

[72] The Applicant argued that prior to the Respondent's disclosure, the Applicant did not know all the rationale the Respondent intended to use to defend their assessment. The evidence provided by CNRL is relevant and addresses general economics and the impact of the Respondent's policies.

Board Decision

[73] The Board decision was to allow the testimony.

Board Finding of Fact and Reasons for Decision

[74] The Board sees both "hard" line and "dotted" line references to the aspects noted in the CNRL Rebuttal Report Section 5. The "hard line" references are direct references between the rebuttal report to information contained in the original disclosure. "Dotted line" references are where the rebuttal report spoke to items not specifically in the original disclosure. For example, the rebuttal report referred to the economics of a group of assets under complaint (Exhibit 34, page 7). The information was not discussed in detail in the original disclosure; however, it demonstrated actual economics in the rebuttal which were only discussed in general terms in the original disclosure. Thus, the evidence does not appear to be improper as

rebuttal. In general, the Board has allowed testimony with potential relevance during the hearing, with the understanding that it would allocate appropriate weight. The decision to allow section 5 into the record is consistent with this approach, and the Board will assign appropriate weight when making its decision.

PRELIMINARY ISSUES RAISED DURING THE MERIT HEARING

Issue #6 - Use of Hearing Material in Dealings with Ratepayers

[75] During the hearing, and immediately prior to the testimony of the Applicant's witness Mr. Pierson, the Applicant advised the Board that it had been made aware that a member of the Provincial Assessor's department, had contacted an employee of Mr. Pierson's employer, DuCharme, McMillen & Associates Canada, Ltd. (DMA), and cited a reference to the opening remarks of the Applicant's Counsel, specifically dealing with the assessment of pulp and paper properties (Exhibit C61). The Applicant requested the Board consider restricting the assessor's attendance by WebEx and consider providing them with a copy of the recording of the hearing once that technology was available (likely within 24 hours).

Applicant's Position

[76] The Applicant raised a concern with the number of assessors employed by the Provincial Assessor who attended the hearing by virtual technology (WebEx). The Applicant acknowledged that the hearing was a public hearing, and that all the attendees had executed confidentiality agreements to acknowledge the nature of certain of the Applicant's confidential business information. Notwithstanding the confidentiality agreement, and the public nature of the hearing, the Applicant requested that the assessors recuse themselves from the hearing if the purpose of the assessors' attendance was discretionary or not necessary to complete the duties as an assessor.

Respondent's Position

[77] The Respondent noted that the hearings are open in nature, and that in respect of any confidential information, the employees of the Provincial Assessor have executed Confidentiality Agreements to not disclose confidential information. The information specifically referred to by the Applicant should not be considered confidential, as it was within the Applicant's opening remarks. The Respondent provided copies of the related e-mail correspondence between the employees of the Provincial Assessor's Office and the representative of the ratepayer (Exhibits R59 and R60).

[78] Regarding the event raised by the Applicant, the Respondent was initially unaware that there was an issue. Upon investigation, the Respondent was able to determine that there had been e-mail correspondence between an employee of the Provincial Assessor and an employee with DMA. Copies of the e-mail chronology were provided to the Board (Exhibits R59 and R60) to reference that the discussions began prior to the commencement of the hearing and that there was no confidential information exchanged.

[79] The Respondent confirmed that the hearing was of a public nature and that there were no restrictions on assessors attending the meeting. The Respondent noted that all those who attended by WebEx had executed confidentiality agreements and that the assessors were bound by legislation as well to have the information remain confidential. The Respondent confirmed that it would ensure that confidentiality agreements were in place prior to any assessors attending the hearings.

Board Decision

[80] The Board directed the Parties to determine if they could come to a satisfactory resolution to the Applicant's issue. The Parties were able to resolve the matter and briefly the resolution was as follows:

a. The purpose of the employee e-mail was to respond to questions concerning the annual assessment of a pulp and paper plant and its designated industrial property and discussed the application of Schedule D to the assessment of assets;
b. The assessor would not listen to future live WebEx hearings as the subject hearing has no relationship with her assessment duties;
c. The Respondent requested that two e-mails from the assessors (Exhibits R59 and R60) be entered as exhibits;
d. The Applicant requested that its e-mail to the Respondent be entered as an exhibit (Exhibit C61); and
e. The Respondent raised that this was a one-time concession on its part and should not be construed as establishing a precedent

[81] The Board was amenable to the joint resolution.

Board Finding of Facts and Reason for Decision

[82] The Parties mutually agreed to the disposition of the objection and the Board was satisfied that the outcome was reasonable.

Issue #7 – Testimony of Mr. Kevin Zeiner

[83] The Applicant objected to Mr. Zeiner providing his testimony.

Applicant's Position

[84] The Applicant stated that Mr. Zeiner had been qualified as an expert witness concerning market value appraisals for buildings and structures, and that Mr. Zeiner should not be providing his opinions relating to machinery and equipment (M&E). In that the Parties were providing a mutual agreement with respect to the buildings and structure assessments, the Applicant considered it was "dangerous" to open the buildings and structures valuation theory. The concern was that the Board had not decided on whether to accept the mutual agreement on buildings and structures. As Mr. Zeiner was not qualified as an expert on M&E assessment his testimony was of no value to the Board. The Applicant conceded that Mr. Zeiner could speak to the Kent McPherson Report model; however, only in the context of buildings and structures and not M&E.

Respondent's Position

[85] The Respondent agreed that there was a mutual recommendation on buildings and structures assessments; however, as it was not decided by the Board, Mr. Zeiner's testimony was of benefit. As well, while not specifically addressing M&E assessment, Mr. Zeiner was brought forward by the Respondent to address appraisal concepts raised in the Kent McPherson Report and whether the model developed from that report is appropriate. Mr. Zeiner would not be expanding his evidence and would stay within the borders of his report.

Board Decision

[86] The Board decided to allow the testimony of Mr. Zeiner and confine his testimony to matters related to buildings and structures.

Board Finding of Fact and Reasons for Decision

[87] The Board decision was based on allowing procedural fairness. When the Kent McPherson Report was discussed, Mr. Beatty discussed the assessment of buildings and structures, and as such Mr. Zeiner should be allowed to enter his report and address the buildings and structures component. Mr. Zeiner was requested to only refer to matters related to buildings and structures. The Board would determine the appropriate weight to apply to Mr. Zeiner's testimony.

Issue #8 – Dr. Edward Thompson Line of Questioning

[88] During the questioning of Dr. Thompson, the Respondent requested the Board to intervene regarding the suitability of the Applicant's questioning of Dr. Thompson. In particular, concerning the question - "Isn't another check on the accuracy of what an appraiser has done, or evaluator has done, is to employ, or look at, different valuation methods".

Respondent's Position

[89] The Respondent's position is that Dr. Thompson is neither an appraiser nor an assessor and that he is offered as an expert on representative sampling. The questioning is not within the areas on which Dr. Thompson is providing his expert testimony.

Applicant's Position

[90] The Applicant's position is that Dr. Thompson cites International Association of Assessing Officers (IAAO) appraisal principles within his testimony, and it is pertinent to understand Dr. Thompson's level of knowledge regarding those appraisal principles.

Board Decision

[91] The Board decided to allow the line of questioning of Dr. Thompson to continue.

Board Finding of Facts and Reason for Decision

[92] The Board recognizes that Dr. Thompson was qualified as an expert on mathematics and statistics and engineering production. The Board also recognizes that the line of questioning concerning IAAO was first presented by Dr. Thompson. Notwithstanding this decision, the Board's focus and weight will be placed on Dr. Thompson's testimony pertaining to that which he was qualified to testify on.

Issue #9 – D. Allan Beatty Rebuttal Testimony Concerning Sales and Acquisitions

[93] The Respondent objected to the verbal testimony of Mr. Beatty regarding the concepts of market value.

Respondent's Position

[94] During the rebuttal testimony of Mr. Beatty, the Respondent stated that there was no mention in either of the Kent McPherson Reports of the concepts of actual market sales. Mr. Beatty's point was raised in response to Ms. Young's submission that if market sales were to be considered, then all costs associated with the asset should be considered to determine the difference between actual sales and full cost. That would potentially affect government policy, according to Ms. Young. The Respondent argued that this information was known to Mr. Beatty prior to the preparation of the Kent McPherson rebuttal report, where

it should properly have been dealt with. To introduce it in his verbal rebuttal does not allow the Respondent the proper opportunity to review the concepts. The proper methodology is to include it in the rebuttal report and perhaps expand on it in the verbal testimony.

Applicant's Position

[95] The Applicant stated that Mr. Beatty was not introducing new concepts; rather, he was demonstrating that the request was not for a nominal amount by discussing the concept of nominal value introduced in the CNRL Report, his report recommending a 60% reduction, and CNRL requesting a 50% reduction. Additionally, the Applicant noted Mr. Beatty did speak to the matter in the Kent McPherson Rebuttal Report (Exhibit C32, page 6).

Board Decision

[96] The Board decided to allow the testimony of Mr. Beatty to continue.

Board Finding of Facts and Reasons for Decision

[97] The concept of market value has been thoroughly discussed throughout the hearing; therefore, Mr. Beatty was not introducing a new concept. The Board reminded all the Parties that the Board will not entertain introduction of new evidence without the proper disclosure requirements being met.

Issue #10 – CNRL Report – CNRL Rebuttal Testimony Concerning the Natural Decline of Production

[98] The Respondent requested that the verbal testimony of Mr. David Pole, concerning the issue of natural decline in production capacity, be restricted to evidence which had been referenced in the CNRL written report.

Respondent's Position

[99] The Respondent's position was that while Dr. Thompson had included the methodology for calculating the decline in production flow rates, Mr. Pole did not respond to the material in the CNRL Rebuttal Report but was introducing evidence in his verbal testimony that was not in the report. This constituted the introduction of new evidence.

Applicant's Position

[100] The Applicant stated that the CNRL Rebuttal Report referred to the graphs included in the Dr. Thompson Report, and accordingly it was reasonable that Mr. Pole speak to it in his remarks. The Applicant further stated that it was not Mr. Pole's intent to challenge the calculations or to provide new evidence.

Board Decision

[101] The Board allowed the rebuttal testimony to continue.

Board Finding of Facts and Reasons for Decision

[102] The Board observed that it has allowed a broad range of discussion on a wide range of topics. The Board required Mr. Pole to remain within the boundaries of his report; however, it would continue to allow some latitude to expand on related concepts.

Issue #11 - Should the Board accept the form of confidentially agreement as proposed in Exhibit C43?

[103] The Applicant advised that certain documents include confidential information of CNRL and requested the documents be "sealed". The documents are referred to in the Exhibit List as follows:

a. CNRL Report, David Pole Unredacted (Exhibit C3.1)
b. Deloitte Report Unredacted (Exhibit C5.1)
c. Deloitte Report Unredacted (Exhibit C6.1)

Applicant's Position

[104] The Applicant confirmed that the Parties had agreed to the form of a Confidentiality Agreement with respect to certain documents deemed to include CNRL confidential business information.

Respondent's Position

[105] The Respondent agreed to the Applicant's request and confirmed that the form of the Confidentiality Agreement has been agreed to. The agreement details what is redacted or not redacted, how evidence is given, deals with the participants and how the transcript will be marked. As well, the agreement discusses how the confidential information will be dealt with in the event of a judicial review of the Board decision.

Board Decision

[106] The Parties have agreed to the form of a Confidentiality Agreement concerning certain documents. The Board has also reviewed the proposed document (Exhibit C43) and approves the use of the document. The Board orders that Exhibits C3.1, C5.1 and C6.1 be sealed.

Board Findings of Fact and Reason for Decision

[107] The Parties provided a joint submission to accept the form of confidentiality agreement and the Board did not perceive any potential issues with using such form. The information that the Applicant requested be redacted appears to be confidential in nature and meets the requirement to be sealed.

[108] The Board orders that Exhibits C3.1, C5.1 and C6.1 be sealed.