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CPTA WESTERN CONFERENCE

Legal Panel March 2020

Carol Zukiwski, Counsel

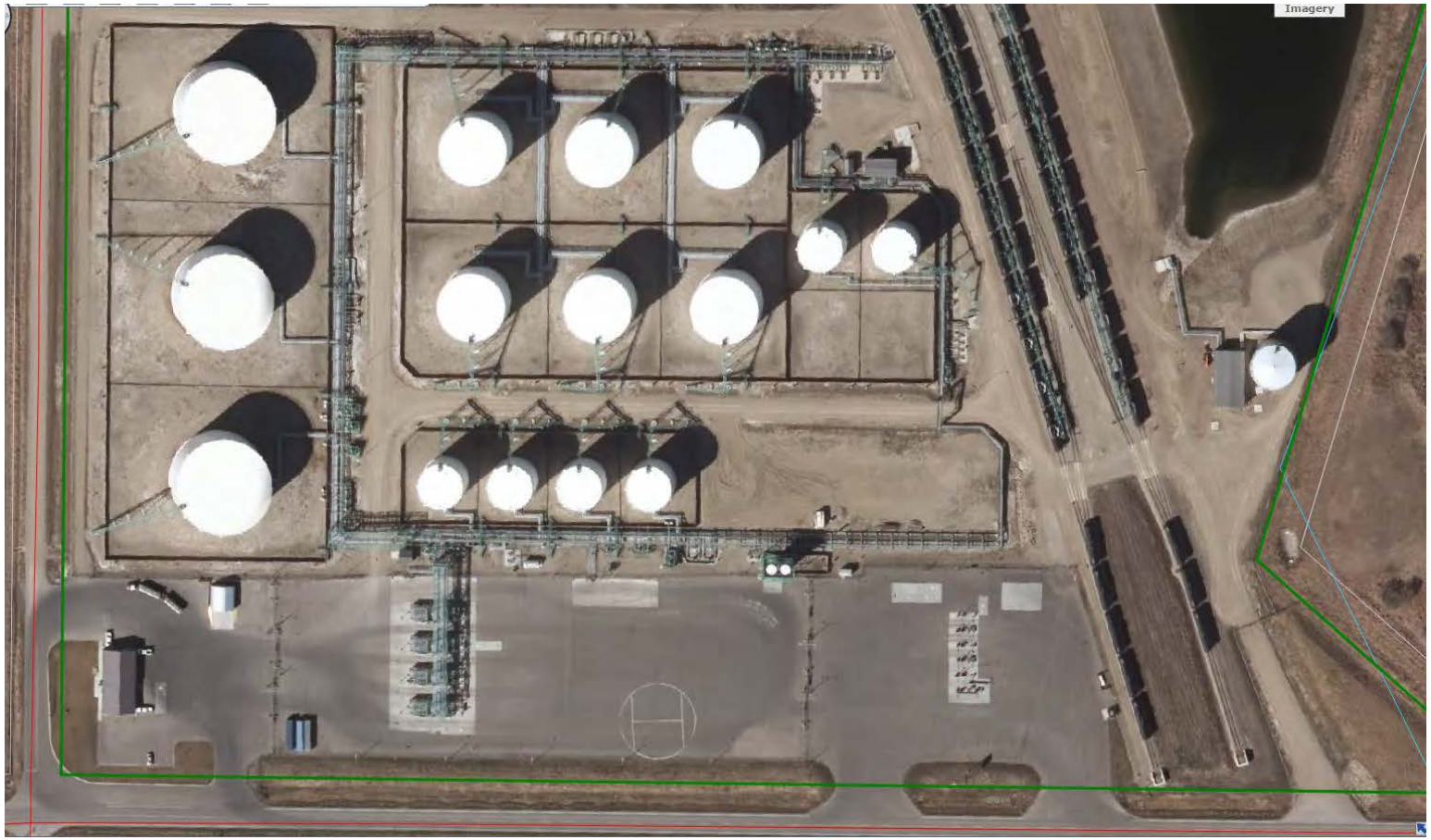
TOPICS TO DISCUSS

- List of cases
- Meaning of the term “processing” - definition of M&E
- Late complaints
- Bit coin mining

Meaning of the Term "Processing" – Definition of M&E

Wheatland County v Federated Cooperatives Limited, 2019 ABCA 513

- 2 ARB Hearings – s. 291 issues
- 1 hearing after construction
- Judicial review
- Appeal to Court of Appeal


Imagery

Overview of the Operation of the Facility

- Looking at the aerial photograph on the right hand side of the photo there are the railcars which bring the regular gasoline and diesel to the facility from a refinery in another province.
- The regular gasoline and diesel are removed from the trains by separate pumps that move the fluid along designated piping to designated tanks.
- Purple dye (for farm diesel) and IVD additive are brought to the facility by trucks and placed in dedicated tanks.
- At the bottom of the photo there are the load-out arms.
- A tanker fuel truck pulls up under the load out arms and the driver enters a code into the computer to request the type of fuel.

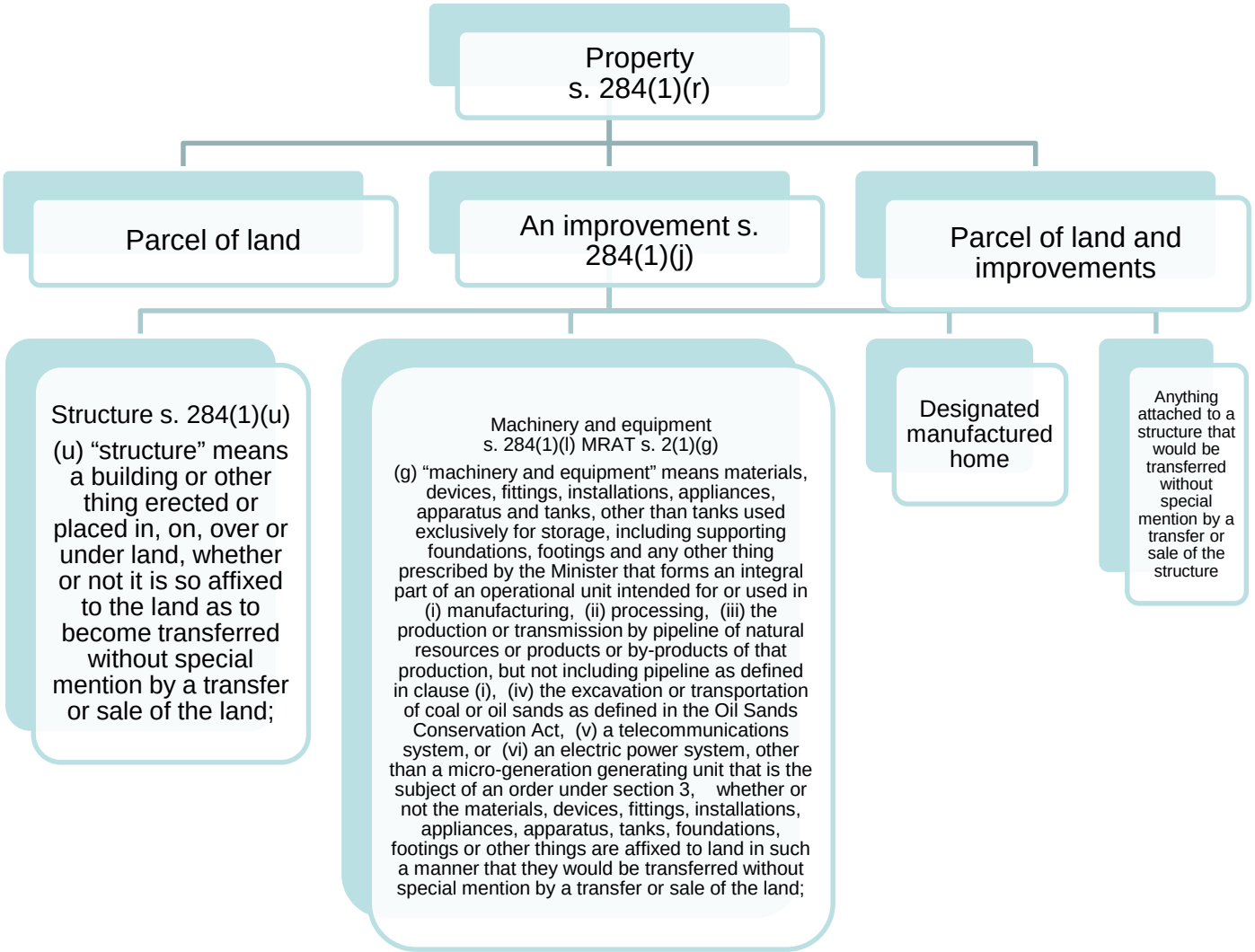
Overview of the Operation of the Facility

- That request signals the pumps at various tanks to send the fluid from the tank along dedicated piping and dedicated pumps to the load out arms.
- The only mixing of fluid to create a new product occurs in the last 20 feet of the load out arms before the fluid goes into the tanker truck.
- Purple dye (for farm diesel) and IVD additive are brought to the facility by trucks and placed in dedicated tanks.
- At the bottom of the photo there are the load-out arms.
- A tanker fuel truck pulls up under the load out arms and the driver enters a code into the computer to request the type of fuel.

Overview of the Operation of the Facility

- The gasoline in the large tanks is periodically sampled to test that the fluid in the tank meets specifications and the large tanks have a valve at the bottom to drain water if necessary.
- Gasoline can be moved between large tanks to ensure it meets specifications
- There is a fire suppression system and a slop/waste system.

Issues to be decided – type of improvement? If M&E, what is the Operational Unit? Tanks exclusively for storage?


Property
s. 284(1)(r)
Parcel of land
An improvement s. 284(1)(j)
Parcel of land and improvements
Structure s. 284(1)(u)
(u) “structure” means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land;
Machinery and equipment
s. 284(1)(l) MRAT s. 2(1)(g)
(g) “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 (i) manufacturing, (ii) processing, (iii) the production or transmission by pipeline of natural resources or products or by-products of that production, but not including pipeline as defined in clause (i), (iv) the excavation or transportation of coal or oil sands as defined in the Oil Sands Conservation Act, (v) a telecommunications system, or (vi) an electric power system, other than a micro-generation generating unit that is the subject of an order under section 3, whether or not the materials, devices, fittings, installations, appliances, apparatus, tanks, foundations, footings or other things are affixed to land in such a manner that they would be transferred without special mention by a transfer or sale of the land;
Designated manufactured home
Anything attached to a structure that would be transferred without special mention by a transfer or sale of the structure

Federated Co-Operatives Ltd. v Wheatland County

The meaning of the term "processing" under *MRAT* has been considered by many Composite Assessment Review Boards and the Municipal Government Board in the past. The Wheatland County Composite Assessment Review Board adopted the following definitions of "manufacturing" and "processing" that have been followed by numerous other Composite Assessment Review Boards since:

> [90] In Black's Law Dictionary (8th Ed), "manufacture" is defined as:
>
> **manufacture:** A thing is made or built by a human being, as distinguished from something that is a product of nature; esp. any material form produced by a machine from an unshaped composition of matter.

Federated Co-Operatives Ltd. v Wheatland County

[91] In ***British Columbia (Assessor of Area 11 – Richmond/Delta) v. CCS Corporation,*** 2012 BCSC 1864, the Court considered definitions for "processing".

[15] The applicant assessor brings to my attention several dictionary definitions of the word "process" or "processing" as follows:

"process" – a course of action or procedure, **esp. a series of stages in manufacture or some other operation**; the progress or course of something (in process of construction); handle or deal with by a particular process; treat
Oxford English Reference Dictionary

Federated Co-Operatives Ltd. v Wheatland County

"processing" – includes changing the nature, form, size, shape, quality or condition of a natural product by mechanical, chemical or any other means; with respect to mineral substances, and form of beneficiation, concentrating, smelting refining or semifabricating, or any combination thereof
Dictionary of Canadian Law

"process" – Process is a mode, method or operation whereby a result is produced; and means **to prepare for market or to convert into marketable form**
Black's Law Dictionary, 6th ed. (emphasis added) [in original]

Federated Co-Operatives Ltd. v Wheatland County

[94] In the 2012 tax year decision, the CARB summarized the question as follows:

> [84] In light of the above definition for process, were the inputs subject to a …method, system or technique…? Was there a change in nature or form or a material transformation of the thing undergoing a series of steps?

Federated Co-operatives Ltd v Wheatland (County), CARB Decision No 0349 001/2014 at paras 90-91 and 94

Federated Co-Operatives Ltd. v Wheatland County

On judicial review, the Alberta Court of Queen's Bench confirmed that the definition of "processing" adopted by the Wheatland County CARB was reasonable:

> [166] The definitions accepted by the Board at para 236 of its Reasons somewhat support the Applicant's submission, but the Board clarified that there had to be a change in nature or form to constitute "processing" (Reasons at para 244). That is effectively the same test accepted by the 2013 CARB. After quoting from the 2012 CARB (Reasons at para 236), the 2013 CARB said:
>
> > [95] This CARB believes that this summary accurately captures the essence of the question.
>
> [167] I think the Board intended to find that processing requires a change in nature or form, not merely preparing for market. Mere testing, standing alone, would not be processing.
>
> [168] Given the deference owed to the Board, I cannot say that its definition of processing is unreasonable.

Federated Co-Operatives Ltd v Wheatland County, 2018 ABQB 637 at paras 166-168

Late Complaints – 2018 MGA Amendments

- *Enterprise Properties Ltd. v Flagstaff County,* Intermunicipal Assessment Review Board Decision 2018-02
- Judicial review argued February 2020

Facts

- Date mailed May 31, 2018, to address in Manitoba
- Notice of Assessment date June 8, 2018
- Complaint deadline August 7, 2018
- Complaint form signed August 2, 2018
- Envelope enclosing Complaint Form postmarked August 11 or 17, 2018
- Received by ARB clerk August 20, 2018
- Property owner led no evidence

New Sections

Sending assessment notices

s. 310(3) An assessment notice must be sent at least 7 days prior to the notice of assessment date.

s. 310(4) A designated officer must certify the date on which the assessment notice is sent.

s. 310(5) The certification of the date referred to in subsection (4) is evidence that the assessment notice has been sent.

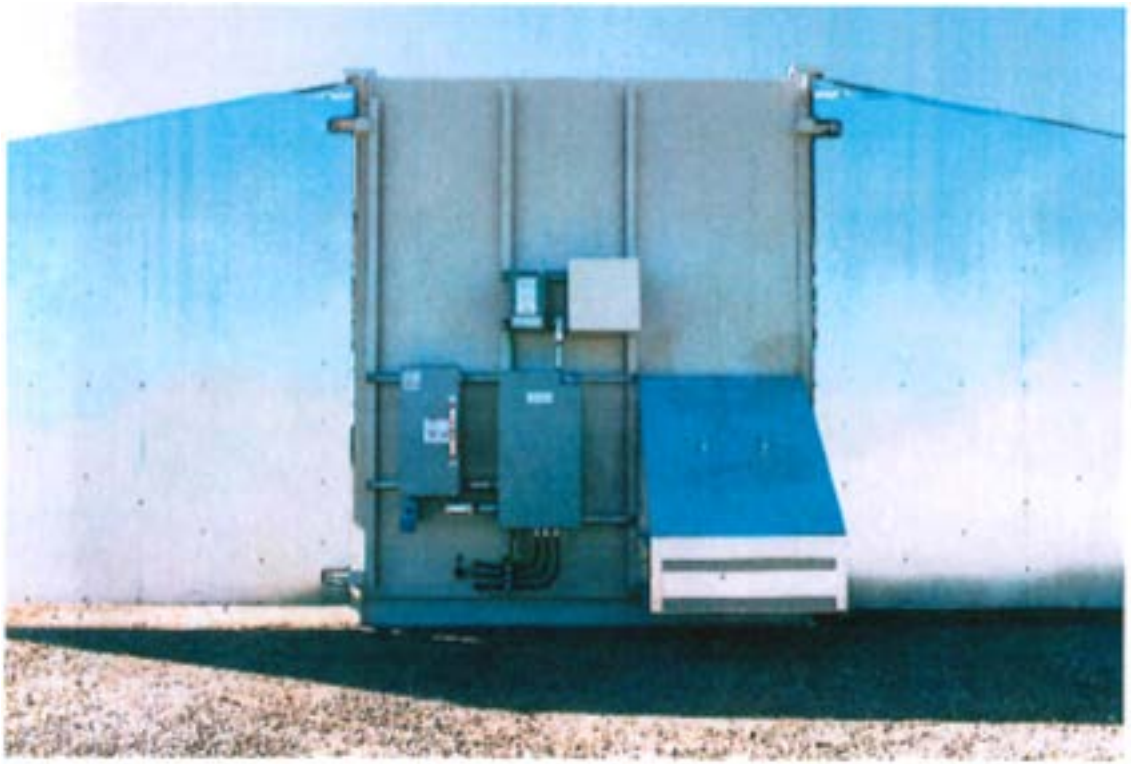
Questions Argued

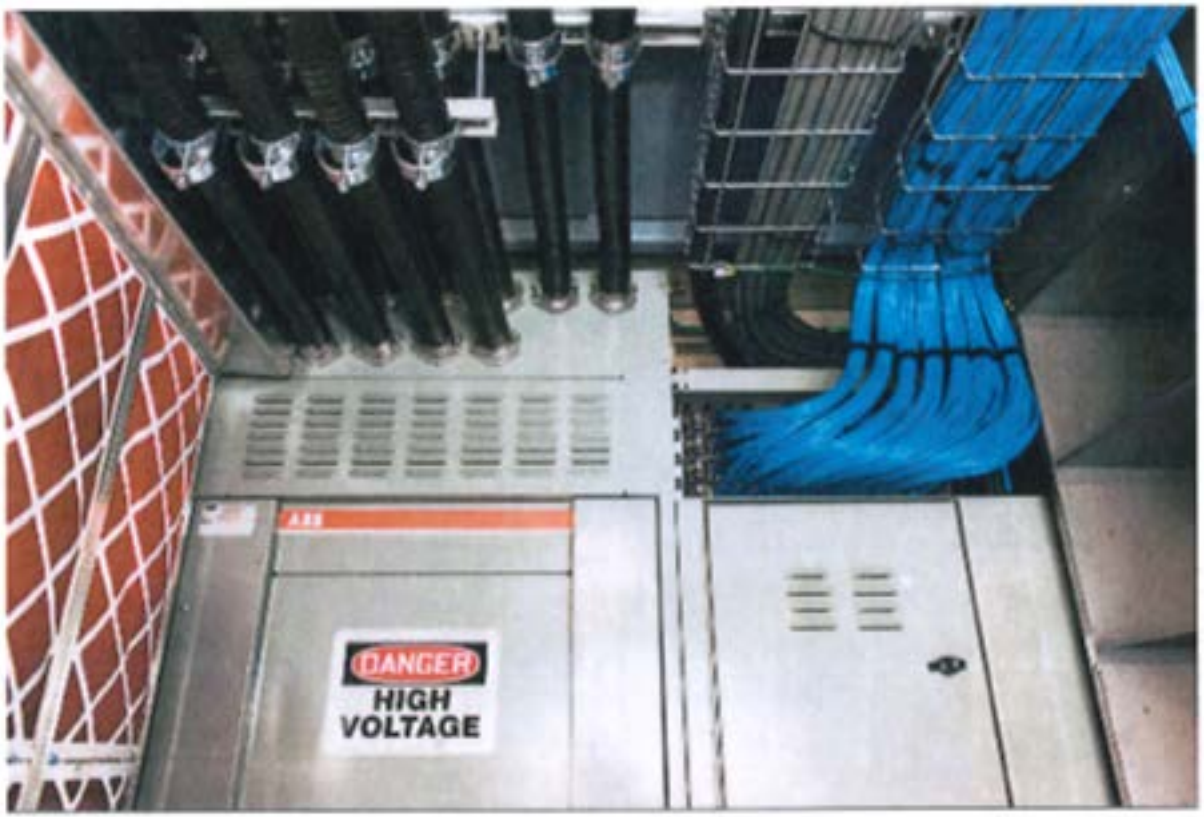
- Does s. 310(3) show a clear intention that the *Interpretation Act* doesn't apply?
- What is the effect of s. 310(4) and (5)?
- Does the municipality have to prove the assessment notice 'received' by the property owner?

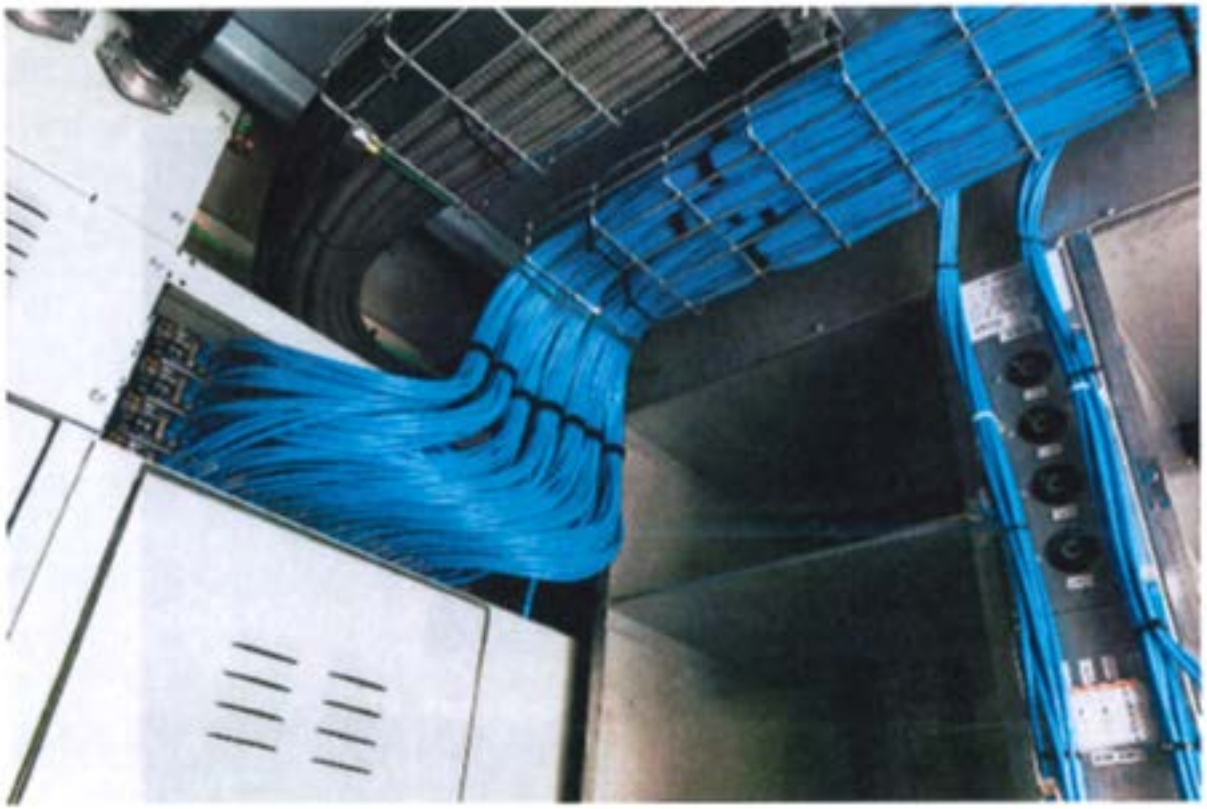
Bit Coin Mining – Structure or M&E?

Hut 8 Holdings Inc. v City of Medicine Hat, CARB 0217-055/2018

- What type of improvements?




DANGER
HIGH
VOLTAGE



Built in racking to hold the computers

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Thank You For Your Attention
Questions Are Welcome

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