

REPLY SUBMISSIONS OF TRIBUTE RESOURCES INC.

November 2, 2015

Application to Determine Whether Certain Pipelines are Transmission Pipelines

EB-2015-0206

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, S.O. 1998, C.15, Schedule B, and in particular Section 21(2) thereof;

AND IN THE MATTER OF the *Assessment Act*, R.S.O. 1990, c.A31, and in particular Section 25(3) thereof;

AND IN THE MATTER OF an Application by Tribute Resources Inc. for an Order determining whether or not the natural gas pipelines owned and operated by Tribute Resources Inc. in Norfolk County, the Municipality of Bayham and the Township of Malahide are gas transmission pipelines.

Reply Submissions

Tribute Resources Inc. ("Tribute" or the "Applicant") hereby respectfully makes the following limited reply submissions in these proceedings. Tribute will make specific reference to certain points raised by the Municipal Property Assessment Corporation ("MPAC"). Tribute fully supports and adopts the positions filed by Ontario Energy Board Staff in their Submissions.

It is Tribute's position that the pipelines that are the subject matter of this application are not pipelines within the definition in the *Assessment Act*, for two reasons.

Firstly, as a practical and factual matter, these pipelines are strictly gathering lines, not transmission lines, which lead into and tie into the transmission pipelines of Union Gas Limited ("Union"), which is an Ontario Energy Board regulated company. Under MPAC's Submissions Issue 1 (on page 9), MPAC submits that any pipe carrying gas would be a transmission line, which clearly is not an accurate definition or interpretation of a pipeline used by an Ontario natural gas producer (not utility) to move gas from a wellhead, in a gathering line to a regulated distributor. Following MPAC's submission, a pipeline carrying natural gas into an individual's personal residence would be included in the definition under S.25 of the *Assessment Act*. This clearly does not make sense nor, we submit, was it intended to be included in the definition of "pipe line". The only people in Ontario who are able to operate gas transmission lines are regulated utilities, and clearly Tribute is not a regulated utility operating regulated transmission pipelines.

Secondly, in order to be included in the definition of "pipe line" under S. 25(1) of the *Assessment Act*, a pipeline has to be designated by the owner as such (contrary to MPAC's Submissions paragraph 1). Tribute submits that for taxation years beginning on January 1, 2012 to 2015 inclusive (the relevant

taxation years), which are the years in question in this case, Tribute has never made the designations as required under S. 25(2) of the *Assessment Act*. Nor has MPAC filed any evidence to support its assertion that the designations were ever made on these pipelines under S. 25(2) of the *Assessment Act*. MPAC has been unable to provide evidence of any such designation in response to Board Staff's Interrogatory #2.

Tribute acknowledges that for prior years, it is possible that there could have been mistakes made by Tribute's predecessors respecting the categorization of these gas gathering pipelines generally, however, these designations were definitely not made for any of the relevant taxation years. It is possible that previous MPAC assessments underlying municipal tax collection may have been in error, causing previous owners to provide pipeline information to MPAC before March 1 of every year, and be paying taxes while not legally obliged to do so, not knowing of the limitations of the *Assessment Act* pertaining only to gas transmission lines, and not gas gathering lines. It is Tribute's position that the onus should be on MPAC to provide this designation evidence before the Ontario Energy Board which it has not done.

Prior to 1960, the Ontario Fuel Board (the OEB's predecessor) was responsible for designating transmission lines for assessment purposes; the current practice is similar in theory, but S. 25(2) of the *Assessment Act* now requires pipeline owners, who operate transmission pipelines to pro-actively, annually, self-report and designate their transmission pipeline statistics to MPAC. The legal principle is essentially preserved as set out in the case of *Ontario Natural Gas Storage, and Pipe Line Storage, and Pipe Line Ltd. v. Dawn Township* [1960] O.J. No. 290 (Ont. S.C.) at paragraph 6. In addition to its purpose as described in the section there must be a designation by the Ontario Fuel Board in order for a transmission line to be assessable. The wording of section 37(a)(1)(c) of the statute back in 1960 is almost identical to S. 25(1) of the current *Assessment Act* defining "pipe line" with the main difference between the present definition under S. 25(1) of the *Assessment Act* and the definition under section 37(a)(1)(c) of the statute back in 1960 is that in the earlier statute, it wasn't the owner who designated whether or not a pipe line was a transmission pipe line but rather it was the Ontario Fuel Board. Similarly to what was the case in 1960 and was upheld in this case, under the current *Assessment Act* S. 25(2), there must be an annual self-reporting designation filing by the owner/operator of the transmission line in order for transmission facilities to be assessable. This annual reporting was not made for any of the relevant taxation years because Tribute does not own any transmission lines.

Paragraphs 28, 37 and 38 of MPAC's Submissions and Tribute's response to OEB Board Staff Interrogatory #6 dealt with the definition of "pipe line" only as it refers to *gas* gathering lines. It is Tribute's position that the MPAC taxation tables containing a reference to gathering lines are applicable and relevant for *oil* pipelines only. Tribute was responding to the tables in the context of this OEB Application, which Tribute submits does not apply to oil gathering lines as no oil gathering lines are operated by Tribute. It is possible for the definition of "pipe line" in S. 25(1) of the *Assessment Act* to include an oil gathering pipeline but in the case of gas pipelines, the definition only includes transmission pipelines as so designated by the owner before March 1 of each year.

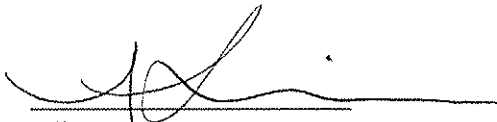
MPAC cannot simply take the position that they ought to be taxed, when that is not what the tables have been designed to include; that is respectfully a mistaken, unlawful and over-inclusive position. To reiterate Tribute's position, gathering pipelines in the *Assessment Act* only pertain to oil, and not to gas, and accordingly, S. 25 of the *Assessment Act* only applies to gathering lines for oil, not gas. Tribute wishes to make it clear as a response to MPAC's Submissions points 37 and 38 that Tribute is not

challenging the validity of the Regulation. Tribute is instead making an important distinction between the types of gathering lines to which it applies.

MPAC's Submissions, paragraphs 18 - 20 suggest that if MPAC is unable to assess the owner of the gas gathering pipelines directly under S. 25 of the *Assessment Act*, then it will assess the individual landowners for the designated fair market value of the pipelines under assessment situated on their lands. Although the Board has submitted that this is not within the scope of this application, Tribute respectfully advises the Board that contained in the existing land lease and land rights agreements that it has with its landowners, for all of its field facilities and operations, clauses are included which ensure that the Lessee (Tribute in this case) is responsible for all taxes, rates and assessments levied against the Lessor (landowner) by reason of the Lessee's gas production from their lands including equipment and pipelines installed thereon. These clauses ensure that Tribute will hold all of the landowners whole in case there is an increase in their property taxes which is attributable to Tribute's pipeline gathering system. In this case, the majority of Tribute's gathering lines lie within the municipal road allowances.

If there is any remaining doubt in this case pertaining to the applicability, interpretation and enforcement of the *Assessment Act* to gas gathering lines, Tribute refers to the case of *Kemp v. Toronto (City)* [1930] O.J. No. 149 (Ont C.A.), with particular emphasis on paragraphs 17 - 20. The legal principle set out in this case is that if there is any ambiguity in the interpretation and application of a taxation statute, that the provisions should be construed in favor of the taxpayer, and not the assessment authority.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY



Tribute Resources Inc.
per: Jennifer Lewis, CFO