



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2015-0206

TRIBUTE RESOURCES INC.

**Application to Determine Whether Certain Pipelines are
Transmission Pipelines**

BEFORE: Christine Long
Presiding Member

Cathy Spoel
Member

May 5, 2016

1 INTRODUCTION AND SUMMARY

Tribute Resources Inc. (Tribute) filed an application on June 22, 2015 with the Ontario Energy Board (OEB) under section 25(3) of the *Assessment Act*, R.S.O. 1990 c.A.31 requesting an order declaring that certain natural gas pipelines owned by Tribute in Norfolk County, the Municipality of Bayham, and the Municipality of Malahide (Tribute Pipelines) are not gas transmission pipelines, and were not gas transmission pipelines at any time from and after January 1, 2012.

Tribute filed the application with the OEB because there is a dispute between Tribute and the Municipal Property Assessment Corporation (MPAC) with respect to whether or not the Tribute Pipelines are “pipe lines” as defined in the *Assessment Act*. MPAC is responsible for the assessment and classification of all real property in Ontario, including pipelines as defined by the *Assessment Act*.

Tribute is an Alberta corporation, permitted to carry on business in the Province of Ontario. It is in the gas production business in Ontario, but is not a regulated gas distribution company.

Tribute’s position is that the Tribute Pipelines should not be assessed, and therefore subject to municipal taxes as “pipe line assets” while MPAC maintained that the Tribute Pipelines are appropriately assessed as “pipe lines”.

Section 25(3) of the *Assessment Act* provides that where there is a dispute as to whether a gas pipeline is a transmission pipeline, on the application of any interested party, the OEB shall decide the matter and its decision is final.

The OEB has determined that the Tribute Pipelines are appropriately assessed as pipelines under the *Assessment Act*.

2 THE PROCESS

Tribute filed an application on June 22, 2015. A Notice of Application was issued on July 10, 2015. The OEB proceeded by a written hearing, with MPAC, OEB staff and Tribute actively participating in the proceeding. MPAC filed intervenor evidence. A written discovery process including responses to interrogatories on both Tribute's and MPAC's evidence was completed on October 6, 2015. MPAC and OEB staff filed submissions on October 20, 2015. Tribute replied on November 2, 2015.

3 BACKGROUND

3.1 Tribute Pipelines

On March 1, 2014 Tribute purchased assets owned by Magnum Gas Corp. (Magnum) and Echo Energy Canada Inc. (Echo), including the assets that are the subject of this application. Since March 1, 2014, Tribute has been responsible for all liabilities respecting the Tribute Pipelines including the taxes.

The Tribute Pipelines connect private gas production wells to Union Gas Limited's (Union) transmission system. These pipelines are part of a low pressure polyethylene pipeline system connected to seventy-one of Tribute's natural gas production wells. The Tribute Pipelines are connected to a compressor site and to Tribute's main gathering pipeline, which moves gas to a metering site and a delivery point near Union's transmission system. Tribute sells the gas to Union at the delivery point. A map of the Tribute Pipelines is included in Schedule A of this Decision and Order.

3.2 MPAC's Assessment of the Tribute Pipelines

MPAC is responsible for the assessment and classification of all real property in Ontario, including pipelines as defined by the Assessment Act. MPAC's assessment is used by municipalities to determine their tax rates and the taxes they collect. In assessing pipe lines, MPAC must first determine the type of pipeline (offshore, gathering, or other) in order to determine which table to use under Regulation 282/98.¹ MPAC has the onus to ensure that land is assessed correctly and to this end, MPAC delivers Notices of Assessment to owners of real property. Once the Notices are delivered, it is the responsibility of the assessed person to raise issues in respect to the assessments.²

MPAC submitted that the Tribute Pipelines are appropriately defined under Regulation 282/98 made under the *Assessment Act* (the Regulation) as gathering pipelines. MPAC further submitted that gathering pipelines in general, and the Tribute Pipelines in particular, are appropriately assigned to the Pipe Line Property Class and are appropriately considered as "pipe lines" as defined in section 25(1) of the *Assessment Act*.

¹ Regulation 282/98, Part X, Tables 1, 2 and 3

² MPAC Submission filed October 20, 2015 at paragraph 14

4 TWO PART TEST

Section 25(1) of the *Assessment Act* sets out two conditions for a pipeline to be considered a “pipe line”:

- i) The pipeline is used for the transportation or transmission of gas; and
- ii) The pipeline was designated by the owner as a transmission pipeline

Tribute, MPAC and OEB staff filed submissions on whether or not the Tribute Pipelines meet the two-part test.

Relevant Sections of the *Assessment Act*

Section 25(1):

“pipe line” means a pipe line for the transportation or transmission of gas that is designated by the owner as a transmission pipe line and a pipe line for the transportation or transmission of oil ...”

Section 25(2):

On or before March 1 of every year or such other date as the Minister may prescribe, the pipe line company shall notify the assessment corporation of the age, length and diameter of all of its transmission pipe lines located on January 1 of that year, in each municipality and in non-municipal territory.

Are the Tribute Pipelines Used for “Transportation” or “Transmission” of Gas?

Tribute argued that the pipelines in dispute are not “pipe lines” as defined under section 25(1) of the *Assessment Act* and therefore should not be taxed under the assessment rules provided for in section 25. Tribute characterized the pipelines as gathering pipelines, and pointed to several definitions used in the gas industry in support of this position.

Tribute argued that the Tribute Pipelines are gathering lines and not transmission lines as defined in *CSA Standard Z662-11 for Oil and gas pipeline systems* (published in June 2011) (the CSA Standards)³. The CSA Standards cover the design, construction, operation and maintenance of oil and gas industry pipeline systems in Canada that convey substances including natural gas.

³ Tribute’s response to OEB staff interrogatory # 3

Tribute is also, as an Ontario gas producer, regulated by the *Oil, Gas and Salt Resources Act*, R.S.O. 1990 (OGS Act). Section 1(1) of the OGS Act defines ‘pipeline’ as follows:

“pipeline” means a pipeline used for the collection of oil, gas or other substance produced from or injected into a well and transportation of the oil, gas or substance to a separating, processing or storage facility or to a distribution or transmission pipeline.

It is Tribute’s position that the Tribute Pipelines constitute a natural gas gathering system used in the private production of natural gas

Tribute submitted that according to the CSA Standards, a gathering pipeline is a pipeline that conveys gas from a wellhead assembly to a treatment plant, transmission line, distribution line, or service line. Tribute noted that this is distinct from the definition of a pipeline in a gas transmission system that conveys gas from a gathering line, treatment plant, storage facility, or field collection point in a gas field to a distribution line, service line, storage facility, or another transmission line.

Tribute submitted that the gathering pipelines owned and used by the natural gas producer should be exempt from assessment and taxation under section 25(1) of the *Assessment Act* because they are not transmission pipelines.⁴

MPAC’s position was that the terms “transportation” and “transmission” in section 25(1) of the *Assessment Act* are to be interpreted in their ordinary meaning. MPAC provided definitions of “transportation” and “transmission” found in the new Shorter Oxford Dictionary.⁵ MPAC submitted that the Tribute Pipelines move, transfer and deliver gas and therefore they transport gas.

OEB staff agreed with the submission of Tribute that the subject pipelines are gathering lines and not transmission pipelines within the meaning of section 25 of the *Assessment Act* and the Tribute Pipelines fit the definition of a gathering line as set out in the CSA Standards.

OEB Findings

While Tribute and OEB staff refer to the definition of gathering pipeline contained in the CSA Standards, it is the OEB’s view that for the purpose of determining whether the Tribute Pipelines attract municipal tax liability, it is only the definition under the *Assessment Act* that is relevant and authoritative in this context.

⁴ Tribute response to OEB staff interrogatory # 6 page 10

⁵ MPAC’s response to OEB Staff interrogatory #3

The language in section 25(1) of the Assessment Act is clear and unambiguous, in that in order for the pipeline to qualify, the pipeline in question must be used for the transportation or transmission of gas.

The OEB finds that the Tribute Pipelines are used for the “transportation” of gas in the ordinary meaning of that word, as the pipelines are used to move or transport gas from one location to another.

The OEB agrees with MPAC that it is also evident from the regulations classifying pipelines of different types that the general term “pipeline” includes gathering lines as well as transportation and transmission lines as those terms might be used or defined elsewhere.

Has the Pipeline Been Designated by the Owner as A “Transmission” Pipeline?

Tribute maintained its position that to the best of its knowledge, the Tribute Pipelines have never been designated by Tribute or by previous owners. In Tribute’s view, only pipelines so designated by their owner should be the subject of assessments and taxation under section 25(1) of the Assessment Act.⁶ Tribute submitted that it never designated with MPAC the pipelines in question as “transmission pipelines”. Tribute argued that MPAC failed to produce evidence that the pipelines were designated by an owner as “transmission pipelines” as required under section 25(2) of the *Assessment Act*. Tribute stated that during the taxation years 2012, 2013 and 2014, none of Tribute, Magnum or Echo notified MPAC under section 25(2) of the *Assessment Act* regarding the pipelines.

MPAC stated that it relies on pipeline companies to report the pipelines and that its assessment is based on these reports.⁷ The OEB finds that this is the only reasonable approach as the assets are buried, so MPAC would have no other way of determining the extent of them.

MPAC’s evidence is that the Tribute Pipelines were reported to MPAC as transmission pipelines under section 25(2) of the *Assessment Act*. However, MPAC stated that:

“MPAC’s records containing the original report have been destroyed. According to MPAC Evidence Tab A, the report was likely received in 2004 or 2005.

MPAC’s internal records indicate that the roll numbers in issue were created on

⁶ Tribute response to OEB interrogatory # 6 and Tribute response to MPAC interrogatory # 1

⁷ MPAC response to OEB Staff interrogatory #2

September 30, 2005 and that omitted assessments were made in approximately November 2005.”⁸

MPAC’s evidence is that an assessment roll number is created for pipelines when they are reported to MPAC and designated by the owner. The Assessment Roll numbers for the Tribute Pipelines were created in 2004. While MPAC no longer has the original records filed by the then owner of the Tribute Pipelines, the OEB finds that it is reasonable to conclude that these assessment rolls were created in the normal course, as deposed by MPAC’s representative.

Notices of Assessment and tax bills were sent to the owners at the time and at regular intervals thereafter, and no objection appears to have been made. The OEB concludes that the only reasonable conclusion to draw from these circumstances is that the Tribute Pipelines were designated by the owners in approximately 2004. While Tribute argued that there is no evidence they were so designated, Tribute did not file any evidence to the contrary, which it could presumably have obtained from the previous owners.

OEB Findings

The OEB finds that MPAC has provided sufficient evidence for the OEB to determine that the Tribute Pipelines were designated by the owner as transmission pipelines as required under section 25(2) of the Assessment Act.

4.1 Conclusion

The OEB finds that the Tribute Pipelines are gas “pipe lines” within the meaning of section 25(1) of the *Assessment Act*.

⁸ MPAC response to OEB staff interrogatory # 2; MPAC response to Tribute’s interrogatory #4(d)

5 ORDER

THE OEB ORDERS THAT:

1. Tribute shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto May 5, 2016

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

SCHEDULE A
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DATED: May 5, 2016
MAP OF TRIBUTE PIPELINES

Tribute Resources Inc. Gathering Pipeline Map

