

**BY E-MAIL**

July 29, 2020

Ms. Christine E. Long  
Board Secretary and Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto ON M4P 1E4  
[BoardSec@oeb.ca](mailto:BoardSec@oeb.ca)

Dear Ms. Long:

**Re: Lagasco Inc.  
Classification of Pipelines in Haldimand County  
OEB Staff Interrogatories to Applicant  
OEB File No. EB-2019-0166**

In accordance with Procedural Order No. 1, please find attached the OEB staff interrogatories for the above proceeding. This document has been sent to Lagasco Inc. and copied to all intervenors.

Lagasco Inc. is reminded that its response to the interrogatories are due by August 10, 2020.

Yours truly,

*Original signed by*

Ritchie Murray  
Project Advisor

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Encl.

**LAGASCO INC.  
CLASSIFICATION OF PIPELINES IN HALDIMAND COUNTY  
EB-2019-0166**

**OEB STAFF INTERROGATORIES TO APPLICANT**

**OEB Staff No. 1**

**Ref.:** Pre-filed evidence of Jane E. Lowrie, Tab A

**Preamble**

Lagasco Inc. (Lagasco) filed an application on June 7, 2019 and pre-filed evidence on May 25, 2019 (collectively the Application) requesting an order determining whether or not certain of its natural gas pipelines in Haldimand County (Pipelines) are gas transmission pipelines pursuant to Section 25(3) of the *Assessment Act, R.S.O. 1990* (Assessment Act).

Lagasco states that the Pipelines are part of a natural gas gathering system used in the private gathering and production of natural gas and include small diameter pipelines that connect natural gas production wells located across Haldimand County to a main gathering pipeline (Main Pipeline) that moves the natural gas produced by the wells to a treatment facility where it is processed in order to meet the quality standards of the local distribution company to whom it is sold.

The pre-filed evidence includes a map that shows the Pipelines relative to the wells, but the map does not provide any landmarks to assist in identifying the location of the Pipelines. Some pipelines on the map are represented with solid lines and others with dashed lines.

**Questions**

- a) Please provide a map(s) that clearly shows the location of the Pipelines relative to readily identifiable landmarks such as towns, roads, shorelines, rivers, railway lines, municipal boundaries, etc., and a north arrow. Please clearly label the beginning and end points of the Main Pipeline.
- b) Either on the same map(s) as in part a) or on a separate map(s), please clearly identify all portions of the Pipelines that occupy municipal road allowance / right of way.

- c) Please explain the difference between the pipelines represented by solid lines and those represented by dashed lines.

## **OEB Staff No. 2**

**Ref.:** Assessment Act

OEB's Decision and Order, Tribute Resources, EB-2015-0206

Pre-filed evidence of Jane E. Lowrie, page 6

### **Preamble**

MPAC is responsible for the assessment and classification of all real property in Ontario, including pipelines as defined by the Assessment Act. Section 25(1) of the Assessment Act sets out two conditions for a pipeline to be considered a "pipe line"<sup>1</sup>:

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

Once it is determined that the property in question is a pipeline, the second step in the process is for MPAC to determine the particular type and diameter of pipeline in order to determine which tax rate to apply in accordance with Ontario Regulation 282/98 (O.Reg. 282/98). The three options for pipeline type are:

- a) Offshore pipelines
- b) Plastic field gathering pipelines and plastic gas distribution pipelines
- c) Other pipelines

Section 25(3) of the Assessment Act provides that where there is a dispute as to the classification of a pipeline in step one of the process, on the application of any interested party, the OEB shall decide the matter and its decision is final.

In the Tribute Resources case, the applicant submitted that its pipelines did not function as transmission pipelines but instead characterized its pipelines as gathering pipelines, and pointed to several definitions used in the gas industry in support of this position, including the CSA Standard Z662 - *Oil and gas pipeline systems* (CSA Z662), which has been adopted through Ontario Regulation 210/01 made under the *Technical Standards and Safety Act, 2000*. Furthermore, Tribute Resources argued that the pipelines in question had never been

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<sup>1</sup> For clarity, pipeline and pipe line are alternate spellings of pipeline.

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

In its decision, the OEB found that Tribute Resource's 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 also found that it is evident from the regulations classifying pipelines of different types that the general term "pipeline" includes gathering pipelines. Finally, the OEB found that MPAC provided sufficient evidence for the OEB to determine that the Tribute Resources pipelines were designated by the owner as transmission pipelines as required under section 25(2) of the Assessment Act.

In the current application, Lagasco submits that the Pipelines do not function as transmission pipelines but instead characterizes them as gathering pipelines, and points to several definitions used in the gas industry in support of this position, including the CSA Z662. Furthermore, Lagasco submits that the Pipelines have never been designated as transmission pipelines, despite the fact that they have been assessed as such for many years. Lagasco submits that the Pipelines are "misclassified" and are being "excessively taxed".

### **Questions**

- a) Given that one option for pipeline type explicitly includes "gathering pipe lines", please explain why Lagasco believes that the general term "pipe line" does not include gathering pipelines?
- b) Does Lagasco share Tribute Resource's view that gathering pipelines owned and used by a natural gas producer should be exempt from assessment and taxation under the Assessment Act? If so, and given that other types of pipelines are municipally taxed, please explain why Lagasco believes that gathering pipelines should be exempt from municipal taxation.
- c) In Lagasco's view, what new facts or new information has become available since the Tribute Resources case that could cause the OEB to change its view that gathering pipelines used in natural gas production are gas "pipe lines" within the meaning of section 25(1) of the Assessment Act? Please explain.

### OEB Staff No. 3

**Ref.:** Pre-filed evidence of Jane E. Lowrie, pages 1-5

#### Preamble

In November 2018, Lagasco acquired various assets including the Pipelines from Dundee Energy Limited Partnership and its general partner Dundee Oil and Gas Limited (collectively Dundee) in the context of an application commenced by Dundee under the *Companies' Creditors Arrangement Act*<sup>2</sup>.

Lagasco submits that there is a disparity between the value of Lagasco's Pipelines and the rate at which they are being taxed, which Lagasco says is worsening annually. Lagasco estimates that "the Pipelines in Haldimand County accounted for approximately \$1.1 million of the total purchase price paid for Dundee's assets." Lagasco submits that "the misclassification of the Pipelines as "pipe lines" under section 25 of the [Assessment] Act leads to their assessed value *increasing* over time." Lagasco states that "the Pipelines" have been assessed for taxation at a "collective value" of \$13,025,000 in 2016, \$13,396,750 in 2017, \$13,765,500 in 2018, \$14,140,250 in 2019 and \$14,512,000 in 2020. Lagasco submits that once all recoverable oil and gas has been removed from under the ground, the Pipelines have no remaining value and are in fact a liability to Lagasco.

The Application is silent on whether the Pipelines are currently being assessed as offshore, plastic gathering/distribution, other, or a combination.

Lagasco states that, prior to the its acquisition of the Pipelines, Dundee appealed the MPAC property assessment notices for the pipelines now attributable to Lagasco, which include various onshore facilities as well as onshore and offshore pipelines used for the production and gathering of oil and natural gas in the upstream production industry. Lagasco states that these appeals were stayed by the Assessment Review Board (ARB) pending the resolution of a previous OEB hearing brought to the OEB by Tribute Resources Inc. (Tribute Resources)<sup>3</sup>

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<sup>2</sup> The *Companies' Creditors Arrangement Act* (CCAA) is a federal law allowing insolvent corporations that owe their creditors in excess of \$5 million to restructure their business and financial affairs. The CCAA has a broad remedial purpose, allowing a company to continue in business while it seeks to develop and obtain the approval of compromises or arrangements with its creditors.

<sup>3</sup> EB-2015-0206, Tribute Resources Inc., application to determine whether certain pipelines are transmission pipelines

The OEB issued its decision in the Tribute Resources case on May 5, 2016.

### Questions

- a) It is clear that some of the assets acquired by Lagasco from Dundee include both onshore and offshore pipelines, and that the Pipelines are a subset of the assets acquired from Dundee. However, it is unclear whether the Pipelines that are the subject of the current application are all onshore pipelines or whether they include some offshore pipelines. Please clarify.
- b) Please confirm that the Pipelines do not include any plastic pipelines. If not, please explain.
- c) Notwithstanding the answers to parts a) and b) above, please confirm whether the Pipelines are currently being assessed as offshore, plastic gathering/distribution, other, or a combination. If they are being assessed as a combination of pipeline types, please provide the approximate lengths of the pipelines that are being assessed as offshore, plastic gathering/distribution, and other.
- d) As a result of its purchase of the Pipelines in the context of an application commenced by Dundee under the *Companies' Creditors Arrangement Act*, was Lagasco able to purchase the Pipelines for less than their book value? If so, please provide the estimated book value of the Pipelines at the time they were purchased.
- e) Please confirm that the collective values stated by Lagasco are in fact for all of the assets acquired from Dundee and not just the Pipelines. If not, please explain.
- f) If the collective values stated by Lagasco are in fact for all of the assets acquired from Dundee and not just the Pipelines, please comment on whether it is possible that the increase in the collective values is driven by assets other than the Pipelines.
- g) Please explain how the alleged misclassification of the Pipelines leads to their assessed value increasing over time. In the response, please identify and explain any applicable assumptions, accounting practices, calculations, figures or tables.
- h) Please explain in detail what happened in respect of the stays by the ARB after the OEB issued its decision in Tribute Resources case.

**OEB Staff No. 4**

**Ref.:** Pre-filed evidence of Robert Koller, pages 5-6

**Preamble**

Deloitte LLP was retained on behalf of Lagasco to prepare a report regarding the classification of Lagasco's natural gas pipelines that includes differences between natural gas gathering pipelines and transmission pipelines from an economic perspective (Deloitte Report). The report provides a summary of the four pipeline types defined by the Canadian Energy Regulator: gathering, feeder, transmission and distribution.

The Deloitte Report notes that gathering pipelines and related processing facilities only serve to monetize the value of the primary asset, being the natural gas reserves, and that the useful life of the gathering pipelines is limited to the production and expected life of the natural gas wells to which they are connected. The Deloitte Report notes that transmission pipelines can continue to operate into perpetuity, since their economic life is not directly associated with specific oil and gas reserves.

The Deloitte Report notes that there are several different valuation methodologies for oil and gas properties, but that the income approach utilizing a discounted cash flow (DCF) method is the most common. The Deloitte Report notes that the DCF method does not include a terminal value.

The Deloitte Report concludes that there are fundamental differences between gathering pipelines and transmission pipelines.

The Application does not explicitly state the reason why the Deloitte Report was included in the pre-filed evidence.

**Questions**

- a) Please confirm that the Deloitte Report was included in the pre-filed evidence in order to support Lagasco's assertion that the Pipelines are gathering lines and not transmission lines. If there were any other reasons for including the report, please identify and explain them.
- b) Please explain what relevance the various asset valuation methodologies have in respect of pipeline classification for the purposes of taxation, if any.

## **OEB Staff No. 5**

**Ref.:** Ontario Petroleum Institute (OPI) intervention request letter

### **Preamble**

In its intervention request letter for this proceeding, the OPI stated that the 2020 Ontario Upstream Oil and Natural Gas Sustainability Plan is calling for a review of the municipal assessment of industry assets including pipelines, equipment, and land to address the irregularities of the municipal taxation of these assets. This would require opening the Assessment Act and proposing a new definition for gathering systems.

### **Question**

Please briefly describe the 2020 Ontario Upstream Oil and Natural Gas Sustainability Plan. In the response, please note if Lagasco is involved in this initiative, who else is involved, and the initiative's key activities and associated timelines.