

**LAGASCO INC.
EB 2019-0166**

MPAC RESPONSES TO OEB STAFF INTERROGATORIES

OEB Staff Interrogatory No. 1

Ref.: Lagasco Inc.'s application and pre-filed evidence
Lagasco's response to OEB staff interrogatory No. 3 e)
MPAC's evidence, page 2

Preamble

Lagasco Inc. (Lagasco) filed an application on June 7, 2019 and pre-filed evidence on May 25, 2020 (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).

MPAC states that pipelines are real property and are subject to assessment and municipal taxation. MPAC states that pipelines for the transportation or transmission of gas or oil are assessed using the Linear Method and that all "other" pipelines are assessed using the Current Value Method.

Lagasco submits that the Pipelines are gas gathering lines not transmission lines, and therefore should be exempt from municipal taxation.

Questions

- a) Please explain how the Current Value Method is applied to the assessment of "other" pipelines. Please include as part of the response how the Current Value Method accounts for depreciation of the pipelines.

MPAC Response 1a):

Although Lagasco submits that the Pipe Lines should be exempt from municipal taxation, the OEB has no jurisdiction to determine whether Lagasco's Pipe Lines are taxable or exempt. The OEB's jurisdiction is limited to determining whether an

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Applicant's Pipe Lines should be assessed pursuant to s. 25 of the *Assessment Act*.

The *Assessment Act* defines current value. Except in limited circumstances, it does not specify a value or a valuation methodology to be used to determine current value. The Current Value Method requires properties to be assessed at "the amount of money the fee simple, if unencumbered, would realize if sold at arm's length by a willing seller to a willing buyer."

If Lagasco's Pipe Lines are assessed using the Current Value Method, they would be assessed as part of the land (and to the owner of the land) under or over which they run. The current value at the legislated valuation date, including any depreciation, would be determined based on the available evidence.

- b) If the pipelines were classified as "other" pipelines, and therefore were subject to taxation under the Current Value Method, would the end result be that Lagasco would be exempt from municipal taxation? If not, please explain your understanding of the statement by Lagasco that "the Pipeline are gas gathering lines not transmission lines and therefore should be exempt from taxation".

MPAC Response 1b):

MPAC does not agree with Lagasco that, if the Pipe Lines are not assessed under s. 25, they are exempt from taxation.

Pipe lines are 'land' as defined in the *Assessment Act* and, therefore, they are subject to assessment and taxation for municipal purposes.

s. 1 ('land'):

"land", "real property" and "real estate" include, ...

(d) all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to land,

(e) all structures and fixtures erected or placed upon, in, over, under or affixed to a highway...

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Pipe lines are taxable whether they are assessed under s. 25 by the Linear Method, or by the Current Value Method. The legislative provision under which land is valued has no bearing on its liability for assessment and taxation.

As a result of the difficulty in valuing pipe lines using the usual Current Value Method, as set out in more detail below, section 25 of the *Assessment Act* simply provides an alternative, regulated value for the assessment of pipe lines, to which municipal taxation rates would apply. Lagasco's statement represents a misunderstanding of the *Assessment Act*.

- c) If the Current Value Method were applied to the Pipelines, then are there any circumstances under which there would be no municipal taxes owing? Please include in the response whether this is the result of the tax burden being shifted to another entity; if so, please explain.

MPAC Response 1c):

See also MPAC Response 1b). Municipal taxation rates would continue to apply to the Pipe Lines regardless of the method by which they are valued, but pipe lines not subject to these special assessment and valuation rules are assessed at their current value to the owner of the property over/under which they are located.

If Lagasco is successful in this Application, the assessment of its Pipe Lines would be to the owners of the parcels under or over which the Pipe Lines run, not to Lagasco.

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- d) Please provide a summary table in the following format that compares the assessed value of the Pipelines under the Linear and Current Value methods for the years 2016-2019? If MPAC does not have sufficient information to determine the assessed value of the Pipelines using the Current Value Method, then please provide an explanation of MPAC's understanding of whether the assessed value would be higher or lower compared to using the Linear Method.

Year	Linear Method (LM)	Current Value Method (CVM)	Difference (CVM - LM)
2016			
2017			
2018			
2019			

MPAC Response 1d):

To clarify, each four-year assessment cycle represents a property's assessed value as of a legislated date. For the 2012 assessment cycle, a property's assessed value reflects the value of the property as of the legislated valuation date of January 1, 2012, and applies to the 2013, 2014, 2015 and 2016 tax years. For the 2016 assessment cycle, that valuation date is January 1, 2016, and applies to the 2017, 2018, 2019 and 2020 tax years. Where there has been an increase in the assessed value of land from the prior assessment cycle, any such increase is "phased in" over the next four tax years until the full value of the increase has been applied. For example, if a property's assessed value was \$1M for the 2012 cycle and \$1.4M for the 2016 cycle, the \$400,000 increase will be 'phased in' over the 4 years of the 2016 cycle, so the assessment on which taxes are levied would be \$1.1M for 2017; \$1.2M for 2018; \$1.3M for 2019; and \$1.4M for 2020.

MPAC is not in a position to calculate and provide a Current Value assessment for each of Lagasco's Pipe Lines.

The Linear Method provided for under section 25 of the *Assessment Act* has been legislated because the assessment of pipe lines using the Current Value Method is extremely complex, time consuming, and costly. In many cases, pipe lines

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extend through more than one municipality, which can impact its Current Value assessment. The special valuation rules under section 25 of the Act are designed to limit that cumbersome process.

If the Pipe Lines are valued using the Current Value Approach, they would not be assessed separately on their own roll number as is currently the case. Instead, their value would be included as part of the assessed values for the thousands of individual parcels of real property over or under which the Pipe Lines run. This will require an analysis of the market circumstances of each individual property, which is a herculean task. It is for this reason that the Legislature has mandated that pipe lines be assessed separately, using the Linear Method, to the pipe line companies.

OEB Staff No. 2

Ref.: Lagasco Inc.'s application and pre-filed evidence MPAC's evidence

Preamble

Neither Lagasco nor MPAC stated whether the gas reserves associated with the Pipelines are subject to municipal taxation.

Question

Can MPAC confirm whether Lagasco's gas reserves are in any way subject to municipal taxation? If so, please explain and make note in the response whether or not MPAC is involved in the process of assessment and taxation of the gas reserves.

MPAC Response 2):

Mineral rights and gas reserves are assessed pursuant to sections 3(1)-20 and 20 of the *Assessment Act*.

OEB Staff No. 3

Ref.: *Assessment Act, 1990*, section 25 (2)
MPAC evidence, page 4

Preamble

The Assessment Act defines a pipeline as “a pipe line for the transportation or transmission of gas that is designated by the owner as a transmission pipe line...”.

MPAC states that it “relies on pipeline companies to report or designate their pipe lines, and it assesses (or ceases to assess) the pipe lines based on the information, reports and designations it receives.”

MPAC states that its standard procedure, when advised by owners that they have installed new pipelines, is to confirm the location, type, pipe diameter and length, and year installed. Once this information has been confirmed, MPAC adds the new pipeline to the assessment roll for the municipality. On receiving the information, the pipeline would be assessed on the next assessment roll.

MPAC states that the Pipelines have been assessed since they were designated by their then owners. In accordance with MPAC’s document retention policy, the records concerning the designation of the Pipelines have been destroyed.

Questions

- a) Is it possible for a pipeline company to report but not designate its pipelines? If this is possible, then please explain what actions MPAC would take in response.

MPAC Response 3a):

Large transmission companies, and a number of smaller companies report annually on all changes to their holdings. When a pipe line company first advises MPAC of the age, length, diameter and location of new pipe lines in its report to MPAC, MPAC creates a roll number for that pipe line. The designation and reporting of new pipe lines under s. 25 occurs simultaneously.

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- b) What advantage is there to a pipeline owner to designate a pipeline as a “transmission” pipeline as opposed to not designating the pipeline and therefore having it assessed as an “other” pipeline?

MPAC Response 3b):

See MPAC Response 1d). By regulating the value, the process of valuing pipe lines is simplified and the value is more predictable for the pipe line companies. A pipe line company could calculate their own values in accordance with the Tables under the Regulation to “budget” for its property taxes, or to verify the assessments placed on their pipe lines by MPAC. It also ensures that pipe line companies receive their assessments directly, as pipe lines assessed under s. 25 are assessed to the pipe line company, whereas pipe lines assessed under the Current Value Method are assessed to the owners of the land over or under which they run. Depending on the nature of the agreement with the property owners, the Current Value Method may require them to negotiate property taxes annually with thousands of property owners.

Pipe lines not assessed under s. 25 do not qualify for the Pipe Line Property Class in section 7 of the Regulation (O. Reg. 282/98):

Pipe Line Property Class

7. The pipe line property class consists of pipe lines within the meaning of subsection 25 (1) of the Act.

Instead, they would be classified as Commercial Property (section 5 of the Regulation), which carries a higher tax rate in many municipalities. See also Response 3h).

- c) Please confirm that it is MPAC’s position that by virtue of the fact that the Pipe Lines have been and continue to be assessed, then it necessarily follows that they were at one time designated by the owner. If this cannot be confirmed, then please explain.

MPAC Response 3c):

MPAC confirms this is its position.

- d) For how many years does MPAC keep the reports or designations filed by pipeline companies before these records are destroyed?

MPAC Response 3d):

In the course of doing business, MPAC creates and receives extensive amounts of records. As can be seen in Exhibit A to Mr. Ford's Affidavit, the majority of the Pipe Lines were installed between 1957 and 2000, therefore the initial reporting to MPAC of these Pipe Lines was over 20 years ago. Record Retention policies have varied over the course of the last 60 years. As a general practice, MPAC retains this class of records on a current plus 3 years basis at this time. See also Response 3e) below.

- e) Why does MPAC's retention policy require or allow documents relating to an owner's designation of its pipeline(s) to be destroyed?

MPAC Response 3e):

Once the first assessment post-designation was made and not appealed, there is no need for MPAC to retain the designation in its files. The municipal assessment and taxation regime is based on certainty and finality: MPAC has an onus to ensure that land is assessed correctly. Once Notices of Assessment are delivered, it is the responsibility of the assessed person to raise issues with respect to the assessments. If no issues are raised, the returned assessment is deemed to be correct, valid and binding even if there are errors. So, once any assessment is finally determined – i.e. once the assessment is returned and any appeals are resolved – the assessment is binding and cannot be challenged. Once an assessment is final and not subject to challenge, the need to retain supporting documents is reduced. See also Response 3g).

It is important to remember that, until recently, documents were stored in paper formats, which made their storage and retrieval significantly more difficult.

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- f) Further to the last question, does MPAC have any means of confirming that an owner has designated its pipeline as transmission pipeline after the record of any such designation has been destroyed? If so, please explain.

MPAC Response 3f):

MPAC would have no way of knowing the location, age, length, or diameter of the pipe lines unless that information was provided by the pipe line company under s. 25 of the *Assessment Act*: the assessment confirms the designation.

- g) Has any owner of any real property ever successfully challenged the classification of its property by MPAC for the purposes of municipal tax assessment on the grounds that MPAC's records were incorrect? If so, please explain.

MPAC Response 3g):

Section 40 of the *Assessment Act* allows appeals to the Assessment Review Board on the basis that certain information on the assessment roll about the property is wrong or that MPAC's current value for the property is incorrect. One of the reasons why an owner may assert that MPAC's current value is incorrect is that the information about the property that formed the basis of the assessment is incorrect. For example, Lagasco has filed s. 40 appeals for these Pipe Lines. If Lagasco believes that any of its Pipe Lines have been assessed at the wrong length, diameter or age, the Assessment Review Board has the jurisdiction to determine if Lagasco is correct.

As noted in Response 3e), the majority of the Pipe lines at issue were installed prior to 2000. The assessments of these Pipe Lines were not appealed until the 2015 taxation year.

It should be noted that Lagasco's Application materials do not allege that there are errors in MPAC's recording of the details of the Pipe Lines or in MPAC's calculation of their assessment using the regulated rates, but rather Lagasco's belief that the value which results from the special assessment rules provided in section 25 is "out of all proportion to [the Pipe Lines'] value"¹.

¹ Paragraph 15 of Ms. Lowrie's Affidavit.

- h) If the OEB were to determine that Lagasco's gas pipelines are not "transmission" pipelines within the meaning of the Assessment Act, what would that mean with respect to the taxation of the pipelines? Would the pipelines fall under a different category of "real property" under the Assessment Act?

MPAC Response 3h):

The Pipe Lines remain liable to assessment and taxation regardless of the OEB's determination.

The Pipe Lines would not fall under a different category of "real property" – they would still be 'land' – under the *Assessment Act*, they would simply be valued on the basis of Current Value rather than the regulated rates provided by s. 25 (Linear Method). They would be valued as "other" pipe lines. See also MPAC Response 1a). This would not affect their liability for taxation (they would remain taxable), but would alter the method by which their assessed value is calculated.

In addition, municipal taxes are determined by multiplying the assessed value by a tax rate.² Tax rates are fixed separately for different classes or types of properties. As discussed in Response 3b), pipe lines assessed under s. 25 are classified in the "pipe line property class", while pipe lines assessed using the Current Value Method would be classified in the commercial property class (*Assessment Act*; ss. 7 and 8; O. Reg 282/98).

² There are tax relief tools, which are not relevant here, which may impact this simplistic mathematical formula.

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OEB Staff No. 4

Ref.: MPAC Evidence, Exhibit A - 2016 Current Value Calculation, page 4
Pre-filed evidence of Jane E. Lowrie, page 5

Preamble

In its evidence, MPAC provides the 2016 assessed value Lagasco's pipeline assets. OEB staff summed the assessed value of the Pipelines, which are located in Dunville, Haldimand and Nanticoke, and found the total to be \$14,512,000. In its pre-filed evidence, Lagasco states that 2016 assessed value of the Pipelines was \$13,025,000.

Question

Please explain why there is a \$1,487,000 difference in the 2016 assessed value of the Pipelines as provided by MPAC and Lagasco. Is this the result of Lagasco including roll number 36 50 210 004 40216 (oil well) and roll number 36 50 010 003 23300 (compressor station) in its total?

MPAC Response 4)

There is a distinction between the assessed value and the assessment on which taxes are levied. As noted in Response 1d) above, increases from the assessed value from one cycle to the next are "phased in".

Paragraph 16 of Ms. Lowrie's Affidavit states that the Pipe Lines were valued at "\$13,025,000 in 2016 ... and \$14,512,000 in 2020". To clarify, the \$13,025,000 value represents the fully "phased in" assessed value for the Pipe Lines for the 2012 assessment cycle (since 2016 is the last tax year in that cycle). Similarly, the \$14,512,000 value quoted for 2020 represents the fully "phased in" assessed value for the Pipe Lines for the 2016 assessment cycle. \$14,512,000 is the assessed value of the Pipe Lines as of the legislated valuation date of January 1, 2016. There is no discrepancy.

Interrogatory: **September 3, 2020**
Response: **September 17, 2020**
Docket: **EB-2019-0166**