

**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 Lagasco Inc. for an Order determining whether or not the natural gas pipelines owned and operated by Lagasco Inc. in Haldimand County are gas transmission pipelines**

**WRITTEN SUBMISSIONS OF THE APPLICANT, LASGASCO INC.**

**(October 8, 2020)**

October 8, 2020

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## TABLE OF CONTENTS

<b>PART I - OVERVIEW .....</b>	<b>1</b>
<b>PART II - FACTS .....</b>	<b>2</b>
A.    The Pipelines.....	2
B.    MPAC Classification and Valuation of the Pipelines.....	3
C.    The Actual Value of the Pipelines Diminishes Over Time.....	6
D.    Procedural History .....	8
<b>PART III - LAW &amp; ARGUMENT .....</b>	<b>9</b>
A.    Principles of Statutory Interpretation.....	9
B.    Technical Meaning of Terms Used in the Act .....	10
C.    Section 25(1) Intentionally Excludes Gathering Pipelines .....	12
<b>PART IV - ORDER REQUESTED.....</b>	<b>16</b>
<b>SCHEDULE "A" – LIST OF AUTHORITIES REFERRED TO.....</b>	<b>TAB A</b>
<b>SCHEDULE "B" – TEXT OF RELEVANT LEGISLATIVE PROVISIONS .....</b>	<b>TAB B</b>

## PART I - OVERVIEW

1. This application concerns the classification and valuation for tax purposes of natural gas *gathering* pipelines, as distinct from *transmission* pipelines, under the *Assessment Act*, RSO 1990, c A.31. The Applicant, Lagasco Inc. (“**Lagasco**”), owns a network of *gathering* pipelines. The economic reality is that their value is tied to the natural gas reserves from which they collect gas, which inexorably depletes over time. However, having been classified as *transmission* pipelines by MPAC, they are being valued and taxed as if their value is *increasing* over time. The enormous and unjust disparity between assessed value for taxation purposes and the true economic value (determined as part of an arm’s length, court-supervised sale process) is more than **50-fold**.

2. MPAC’s classification of Lagasco’s pipelines is inconsistent with (1) the language of the *Assessment Act*, (2) the established industry meaning of the terms used in the *Assessment Act*, and (3) common sense. The evidence filed by Lagasco reinforces these conclusions. Further, where taxing legislation is ambiguous, there is a residual presumption in favour of the taxpayer.

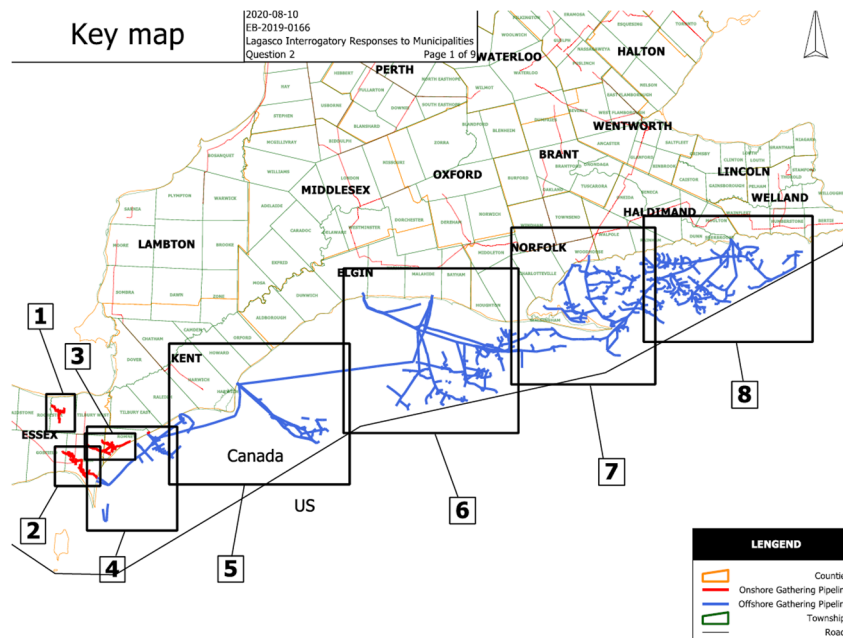
3. MPAC’s classification of Lagasco’s pipelines is incorrect and fundamentally endangers the economic viability of Ontario energy companies like Lagasco. Gathering pipelines are not transmission pipelines in fact or within the meaning of the *Assessment Act*, and cannot be classified, assessed and taxed in the same way.

## PART II - FACTS

### A. The Pipelines

4. Lagasco is a corporation incorporated under the laws of Ontario with its head office in London, Ontario.<sup>1</sup>

5. On November 16, 2018, Lagasco closed the purchase of various assets then owned by 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> Among the assets purchased by Lagasco were certain underground natural gas pipelines located throughout several regions of Ontario (the “**Pipelines**”), mostly offshore:



6. A network of gathering pipelines connects natural gas production wells (the “**Wells**”, also owned and operated by Lagasco), and moves the natural gas produced by the them to a treatment

<sup>1</sup> Affidavit of Jane E. Lowrie sworn May 25, 2020 (**Lowrie Affidavit**) at ¶2.

<sup>2</sup> Lowrie Affidavit at ¶3.

facility, where it is transformed to be saleable and to meet the quality standards to be accepted by the local distribution company or the utility, after which point it passes through a metering site (the “**Delivery Point**”) and is sold or delivered to the local utility companies.<sup>3</sup> The purpose of the Pipelines is to efficiently collect or gather the natural gas produced by the Wells and deliver it to the local utility companies at the Delivery Point.<sup>4</sup>

7. The offshore pipelines attached to the Wells are low pressure steel lines of various diameters which connect to Lagasco’s main pipeline collection systems. A compressor located onshore increases the pressure of the gas flow to in excess of four hundred psi (pounds per square inch) to enable the natural gas to be transferred and sold or delivered to local utility companies at the Delivery Point. The local utility company has its own pipeline system for then transmitting natural gas to consumers.<sup>5</sup>

8. A small percentage of the Pipelines at issue are onshore pipelines, which are generally plastic rather than steel. They also exclusively serve a gathering function.

#### **B. MPAC Classification and Valuation of the Pipelines**

9. Lagasco is responsible for certain liabilities respecting the Pipelines, including municipal taxes.<sup>6</sup> There are 55 roll numbers associated with the Pipelines and other oil and gas assets purchased from Dundee, 26 of which are at issue in this application (i.e., those in Haldimand County, and which Lagasco has identified as similarly situated to those in Haldimand County).<sup>7</sup>

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<sup>3</sup> Lowrie Affidavit at ¶5.

<sup>4</sup> Lowrie Affidavit at ¶7.

<sup>5</sup> Lowrie Affidavit at ¶6.

<sup>6</sup> Lowrie Affidavit at ¶4.

<sup>7</sup> Lowrie Affidavit at ¶10; Exhibit “B” to the Lowrie Affidavit.

Each of them has been assessed by MPAC as a “pipe line”,<sup>8</sup> within the meaning of section 25 of the *Assessment Act*, RSO c A.31, reproduced below:

**25** (1) In this section,

“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, and includes,

- (a) all valves, couplings, cathodic protection apparatus, protective coatings and casings,
- (b) all haulage, labour, engineering and overheads in respect of such pipe line,
- (c) any section, part or branch of any pipe line,
- (d) any easement or right of way used by a pipe line company, and
- (e) any franchise or franchise right,

but does not include a pipe line or lines situate wholly within an oil refinery, oil storage depot, oil bulk plant or oil pipe line terminal;

**Notice**

(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.

10. As a result of MPAC’s classification, and the valuation formulas established by regulations under the Act,<sup>9</sup> the Pipelines, collectively, have an assessed value for 2020 of **\$46.829 million**, and their assessed value has been increasing over time.<sup>10</sup> This does not accord with the commercial reality of the Pipelines’ value; in fact, it is fundamentally discordant with it.

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<sup>8</sup> Lagasco Interrogatory Responses to Municipalities, Question 3; Exhibit “A” to the Affidavit of Ryan Ford sworn July 29, 2020 (“**Ford Affidavit**”).

<sup>9</sup> *General*, O Reg 282/98, ss 7 and 41.

<sup>10</sup> Lagasco Interrogatory Responses to Municipalities, Question 3; Lagasco Interrogatory Responses to OEB Staff, Question 3(e).

11. Lagasco purchased the assets of Dundee as part of a court-supervised sale process run by FTI Consulting Canada Inc., as the court-appointed Monitor. In the context of that process, Lagasco, Dundee and the Monitor agreed to attribute **\$900,000** of the total purchase price for Dundee’s assets to the Pipelines—the same Pipelines which have been assessed by MPAC as having a value of nearly **\$47 million**.<sup>11</sup>

DUNDEE  
PURCHASE PRICE ALLOCATION

Land	\$	400,000
Vehicles	\$	200,000
Equipment - rigs on shore and off shore	\$	2,000,000
Equipment on wells	\$	7,800,000
Seismic	\$	8,000,000
PNG rights	\$	10,700,010
Pipelines	\$	900,000
	\$	30,000,010

12. During the relevant taxation years, neither Lagasco nor Dundee (as applicable) made a designation under subsection 25(1) of the *Assessment Act* identifying the Pipelines as “transmission pipe lines”, nor did they give any notice under subsection 25(2) of the Act with respect to the Pipelines.<sup>12</sup>

13. Lagasco is not in the business of natural gas transmission or natural gas distribution in the Province of Ontario. This is a regulated activity, for which Lagasco does not have the necessary licensing (*i.e.*, Lagasco does not possess a Certificate of Public Convenience and Necessity or hold any franchise for gas transmission or distribution, nor does it hold any licenses as required under the Technical Standards and Safety Authority).<sup>13</sup>

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<sup>11</sup> Lagasco Interrogatory Responses to OEB Staff, Question 3(e).

<sup>12</sup> Lowrie Affidavit at ¶13.

<sup>13</sup> Lowrie Affidavit at ¶14.

### C. The Actual Value of the Pipelines Diminishes Over Time

14. When Lagasco purchased the Dundee assets, the majority of the value of the assets purchased were in the oil and natural gas reserves in place. This represents the oil and gas remaining underground at the time of purchase, to be extracted and recovered over time. The Pipelines purchased by Lagasco serve the sole purpose of gathering and moving this oil and gas as it is removed from the Wells to the treatment facilities and ultimately to the Delivery Point. The throughput on the Pipelines declines year over year as the oil and gas reserves in place decline. Once all recoverable oil and gas has been removed from under the ground, these pipelines have zero remaining value and are in fact, a liability to Lagasco, as significant environmental and regulatory obligations can attach to them.<sup>14</sup>

15. Robert Koller, a partner with Deloitte LLP has provided an independent expert opinion, filed in this case, addressing the true economic value of gathering pipelines.<sup>15</sup> Lagasco relies on his expert opinion report in its entirety. As Mr. Koller explains, “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. Once the natural gas reserves are depleted and there is no longer production from the natural gas wells in that field, the wells are shut-in and the gathering system connected to those wells is rendered obsolete ... The value of the gathering pipelines is inherently captured in the value of the reserves when reserve reports are prepared”.<sup>16</sup>

16. The charts below illustrate the production declines on an annual basis as a result of depletion (at an average rate of 8% for oil and 5% for natural gas), in contrast with MPAC value

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<sup>14</sup> Lowrie Affidavit at ¶15.

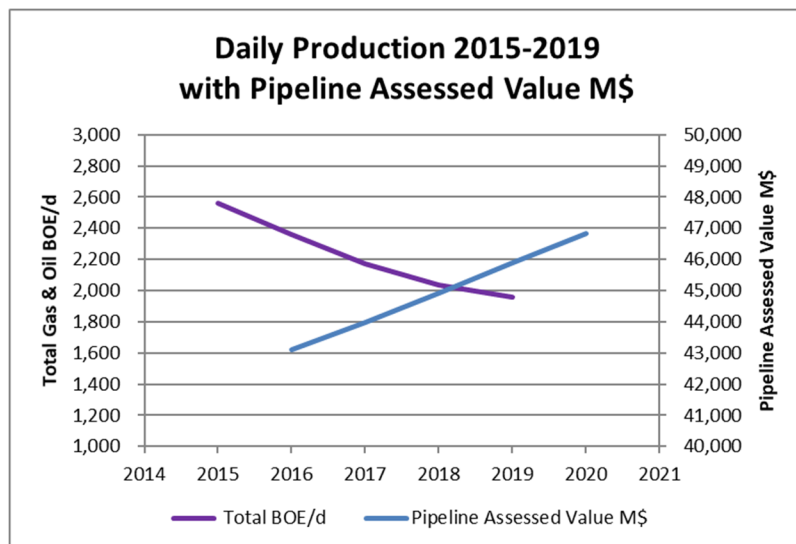
<sup>15</sup> Exhibit “A” to the Affidavit of Robert Koller sworn May 21, 2020 (“**Koller Report**”).

<sup>16</sup> Koller Report at ¶22-23.



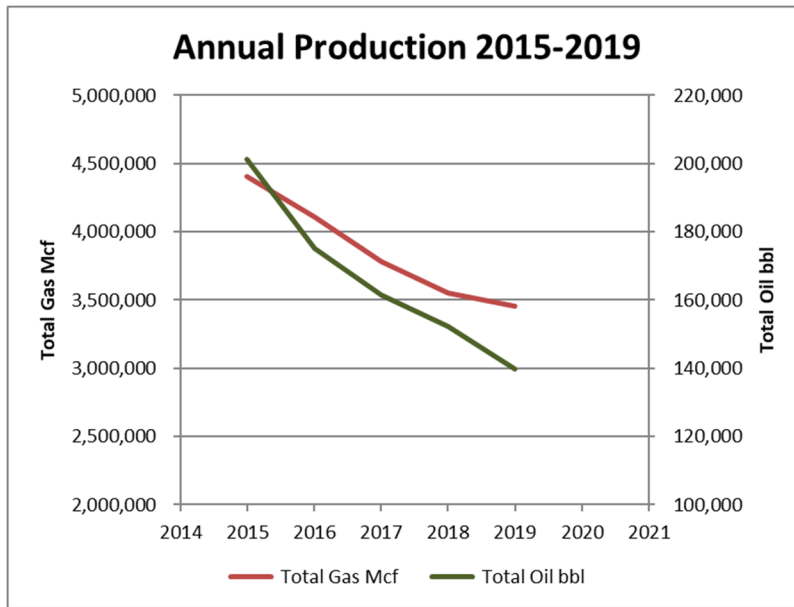
assessments, which have increased over time (at an average rate of 2%). The gap between true value and assessed value widens every year.<sup>17</sup> The valuation formula under the *General* regulation includes a depreciation component that increases over time, but it caps out at 80%, and has been overtaken by annual increases in the per-foot rate of taxation.<sup>18</sup>

Year	Offshore Gas Mcf/d	Onshore Oil bopd	Onshore Gas Mcf/d	Total Gas Mcf/d	Total Oil bopd	Total BOE/d	Pipeline Assessed Value M\$
2015	11,298	552	764	12,061	552	2,562	
2016	10,622	480	641	11,263	480	2,357	43,111
2017	9,901	442	459	10,360	442	2,169	43,967
2018	9,462	417	264	9,726	417	2,038	44,927
2019	9,157	383	301	9,458	383	1,959	45,878
2020							46,829
Ann. Decline	5%	8%	15%	5%	8%	6%	-2%



<sup>17</sup> Lagasco Interrogatory Responses to Municipalities, Question 10.

<sup>18</sup> Lagasco Interrogatory Responses to OEB Staff, Question 3(g); Exhibit “A” to the Ford Affidavit.



#### D. Procedural History

17. Dundee appealed the MPAC property assessment notices for the 2015 taxation year for each of the 26 rolls numbers at issue in this proceeding. These appeals were stayed by the Assessment Review Board pending the resolution of a previous OEB written hearing brought to the OEB by Tribute Resources Inc., case EB-2015-0206.<sup>19</sup>

18. Tribute Resources’ application was unsuccessful. In its decision, the OEB, contrary to its own Staff’s submissions, found that Tribute Resources’ pipelines were used for the “transportation” of gas, and relied on the regulations under the *Assessment Act* as including a reference to “gathering” pipelines. The OEB also relied on a finding, ostensibly based on evidence provided by MPAC, that the pipelines had been designated by the owner as “transmission” pipelines under section 25(2) of the *Assessment Act*.

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<sup>19</sup> Lowrie Affidavit at ¶8.

19. There was no expert evidence before the OEB regarding the valuation of gathering pipelines as opposed to transmission pipelines, as there is in this case. In this case the OEB also has the unique benefit of the arm's length, court-supervised Dundee transaction to gauge the true economic value of the Pipelines. Moreover, there is no evidence in this case that either Dundee or Lagasco made a designation in respect of the Pipelines under s. 25(2). The uncontradicted evidence of Jane Lowrie is that no such designation has been made.<sup>20</sup>

### **PART III - LAW & ARGUMENT**

20. The Pipelines in question are gathering or collection pipelines, and no part of the Pipelines is a "pipe line" within the meaning of Section 25 of the *Assessment Act*.

#### **A. Principles of Statutory Interpretation**

21. The correct approach to statutory interpretation is to read the words of the statute in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of the enacting legislative body.<sup>21</sup>

22. In the specific context of a taxing statute, the legislation should be interpreted in such a way as to achieve consistency, predictability and fairness, so that taxpayers may manage their affairs intelligently.<sup>22</sup> Further, where a taxing statute remains ambiguous after applying the usual rules of interpretation, there is a "residual presumption in favour of the taxpayer".<sup>23</sup>

23. In this case, the "context" of section 25(1) of the *Assessment Act* includes the fact that it relates to the oil and gas industry. Where legislation uses terms that have technical meaning within

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<sup>20</sup> Lowrie Affidavit at ¶13.

<sup>21</sup> *Capcorp Planning (2003) Inc. v. Ontario (Finance)*, 2018 ONCA 406 at ¶41.

<sup>22</sup> *Ibid* at ¶48.

<sup>23</sup> *Ibid* at ¶49.

the industry to which the legislation relates, it can be presumed that the terms were intended to be understood accordingly. The British Columbia Court of Appeal has affirmed this principle in a similar context, interpreting the meaning of “transportation, transmission or distribution by pipeline” under British Columbia’s *Assessment Act*.<sup>24</sup>

24. A final relevant principle of statutory interpretation is that a regulation is subordinate legislation, and cannot exceed or expand the authority of its enabling statute.<sup>25</sup>

## **B. Technical Meaning of Terms Used in the Act**

25. As described below, there is a well-established oil and gas industry distinction between “transmission” pipelines, on the one hand, and “gathering” or “collection” pipelines, on the other hand. This distinction informs the interpretation of the terms “transportation or transmission”, as used in section 25(1) of the *Assessment Act*, and reinforces that they were intended to connote something distinct from the type of gathering and collection purpose served by the Pipelines at issue.

26. CSA Standard Z662-15 (the “**CSA Standard**”) entitled, “*Oil and gas pipeline systems*”, has been legislatively adopted through Ontario Regulation 210/01 (*Oil and Gas Pipeline Systems*) made under the *Technical Standards and Safety Act*, 2000 S.O., c. 16.<sup>26</sup> The CSA Standard covers the design, construction, operation and maintenance of oil and gas industry pipeline systems in Canada. Section 2.2 of the CSA Standard contains the following definitions of “*Gathering line*” and of “*Transmission line*”:

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<sup>24</sup> *Burlington Resources Canada Ltd. v. Peace River (Assessor of Area #27)*, 2005 BCCA 72 at ¶54-57.

<sup>25</sup> *Wawanesa Mutual Insurance Company v. Axa Insurance (Canada)*, 2012 ONCA 592 at ¶63; *AstraZeneca Canada Inc. v. Canada (Minister of Health)*, 2006 SCC 49 at ¶26.

<sup>26</sup> Exhibit “D” to the Lowrie Affidavit.

**Line, gathering** — a pipeline that conveys gas from a wellhead assembly to a treatment plant, transmission line, distribution line, or service line.

**Line, transmission** — 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.<sup>27</sup>

27. Gathering and transmission pipelines are also distinguished in the *Oil, Gas and Salt Resources Act*, RSO 1990, c P.12, as amended (the “**OGS Act**”). The OGS Act regulates gas producers, including Lagasco, and for that purpose 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*;<sup>28</sup> (emphasis added)

28. The Pipelines at issue in the present case are strictly gathering lines, not transmission lines within the meaning of the *Assessment Act*. In the natural gas industry across Canada, gathering lines are well known as smaller, shorter-life pipelines, which literally gather the gas from the wells and move their declining volumes to transmission lines, which are equally known for their much more robust physical nature, which includes higher pressures, usually ongoing full capacity and longer life span, in addition to being cathodically protected and annually surveyed and pressure monitored.<sup>29</sup> There are obvious and significant differences between gathering lines and transmission lines, which regulators and taxation agencies are aware of in accounting for these facilities.

29. A critical difference between “transmission” pipelines, on the one hand, and “collection” or “gathering” pipelines, on the other hand, is that transmission pipelines are used indefinitely,

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<sup>27</sup> Exhibit “C” to the Lowrie Affidavit.

<sup>28</sup> *Oil, Gas and Salt Resources Act*, R.S.O. 1990, c. P.12, s 1 (emphasis added).

<sup>29</sup> Lowrie Affidavit at ¶12.

whereas collection/gathering pipelines are only used for a limited period of time, until a well has been exhausted.<sup>30</sup> The limited lifespan of collection/gathering pipelines means, in accordance with accounting principles, that their value significantly depletes over time until reaching a nil value (or even a negative value, because of decommissioning costs). This depletion of value is *in addition* to the physical depreciation that is typical of other capital assets. The *General* regulation under the *Assessment Act* accounts for physical depreciation, but caps it at 80%, and entirely fails to account for the depletion of gas reserves that eventually drive the pipelines into a nil or negative valuation.

30. Another important difference between the two types of pipelines is that transmission pipelines are often at full or near full capacity, used as a “highway” for transporting gas from one location to another. Whereas with gas collection or gathering lines, the rate of flow diminishes over time as the wells to which the pipelines are connected deplete, until eventually the wells are plugged and the pipelines are abandoned (with the decommissioning cost being a liability rather than an asset).<sup>31</sup>

### **C. Section 25(1) Intentionally Excludes Gathering Pipelines**

31. The plain wording of section 25(1) of the *Assessment Act* distinguishes between two categories of pipeline—gas and oil—and in each case requires that the pipeline be for “transportation or transmission”. In the case of gas pipelines, the Act additionally requires that the pipeline have been designated by the owner as a transmission pipeline:

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<sup>30</sup> Lowrie Affidavit at ¶17.

<sup>31</sup> Lowrie Affidavit at ¶17.

25 (1) In this section,

“pipe line” means [1] a pipe line for the transportation or transmission of gas **that is designated by the owner as a transmission pipe line** and [2] a pipe line for the transportation or transmission of oil, and includes, [...]

32. The *General* regulation containing the valuation formula for pipelines does not employ the terms “transportation” or “transmission”. Rather, it distinguishes among “offshore”, “plastic field gathering”, “plastic gas distribution” and “other” pipelines:

41. (1) For the 2017, 2018, 2019 and 2020 taxation years, the assessed value of a pipe line shall be determined as follows:

1. The length of the pipe line in feet shall be multiplied by the applicable rate in Table 1, 2 or 3 of Part X. Table 1 applies to offshore pipe lines. Table 2 applies to plastic field gathering pipe lines and plastic distribution pipe lines. Table 3 applies to other pipe lines.

2. The amount determined under paragraph 1 shall be depreciated by reducing the amount by the applicable percentage in Table 4 for offshore pipe lines and in Table 5 for plastic field gathering pipe lines, plastic gas distribution pipe lines and other pipe lines.

3. After the reduction under paragraph 2, \$250 shall be added for each connection to an end user. O. Reg. 338/12, s. 1; O. Reg. 397/16, s. 3.

## **PART X TABLES RE ASSESSMENT OF PIPE LINES**

### **TABLE 1 OFFSHORE PIPE LINES — 2017 TO 2020 TAXATION YEARS**

### **TABLE 2 PLASTIC FIELD GATHERING PIPE LINES AND PLASTIC GAS DISTRIBUTION PIPE LINES — 2017 TO 2020 TAXATION YEARS**

### **TABLE 3 PIPE LINES OTHER THAN THOSE TO WHICH TABLE 1 OR 2 APPLIES — 2017 TO 2020 TAXATION YEARS**

### **TABLE 4 DEPRECIATION RATES FOR OFFSHORE PIPE LINES — 2017 TO 2020 TAXATION YEARS**

TABLE 5  
PIPE LINES OTHER THAN THOSE TO WHICH TABLE 4 APPLIES — 2017 TO  
2020 TAXATION YEARS<sup>32</sup>

33. None of these descriptive terms for pipelines is defined in either the *General* regulation or the *Assessment Act*, leaving some degree of ambiguity as to their intended meaning. Importantly, however, the regulation does not purport to expand the definition of “pipe line” in the *Assessment Act*; rather, the regulation specifically refers back to section 25(1) as defining the scope of the “pipe line” property class.<sup>33</sup> Further, as subordinate legislation, the *General* regulation does not have the capacity to expand the definition of “pipe line” in the *Assessment Act*.

34. If possible, an interpretation of the *General* regulation that is not *ultra vires* the *Assessment Act* should be preferred. That means, in this case, that each category of pipeline contemplated by the *General* regulation must be understood as a subcategory of either (1) a pipeline for the transportation or transmission of gas that is designated by its owner as a transmission pipeline, or (2) a pipeline for the transportation of oil. The terms “transportation” and “transmission” connote something different than the purpose served by the Pipelines at issue, both in their plain meaning, and in their technical meaning within the industry. The purpose of the Pipelines is not simply to transport oil and gas from point A to point B (a “highway”), it is to collect oil and gas from wells and deliver it a distribution network (which Lagasco does not own).

35. The vast majority of the Pipelines at issue (>90%) have been assessed by MPAC under Table 1, as “offshore pipe lines”.<sup>34</sup> Only 4% of the Pipelines at issue have been assessed under

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<sup>32</sup> *General*, O Reg 282/98.

<sup>33</sup> *General*, O Reg 282/98, s 7.

<sup>34</sup> Ford Affidavit at ¶10.



Table 2 (i.e., “plastic field gathering pipelines and plastic gas distribution pipelines”). The remainder have been classified under Table 3 (“other”).

36. The plain meaning of “offshore pipe line” is not difficult to reconcile with the definition of “pipe line” in the *Assessment Act*: it is a “pipe line”, within the meaning of s. 25(1), that is located offshore. The *General* regulation does not expand or purport to expand the definition of s. 25(1), which applies exclusively to transportation and transmission pipelines.

37. The plain meaning of “plastic field gathering pipeline” and “plastic distribution pipeline” is more difficult to reconcile with the *Assessment Act*, because the terms employed have different and potentially conflicting connotations with the terms used in the *Assessment Act*: “gathering” and “distribution”, as opposed “transportation” and “transmission”. It can be inferred that the pipelines must be onshore (because this category is an alternative to “offshore”), but it is ambiguous whether the pipelines transport oil or gas, and not clear where they fit under the umbrellas of “transportation” and “transmission”.

38. In resolving this ambiguity, it is notable that gas gathering pipelines are taxed under the same table and at the same rates as gas distribution pipelines—*i.e.*, under the scheme of the regulation, they are treated as equivalent. A reasonable interpretation, reconciling the regulation with the *Assessment Act*, is that both “gathering” and “distribution” refer to a type of dedicated transportation pipeline (as opposed to a limited-life pipeline that gathers oil or gas from a well until it is depleted), and that the distinction between “gathering” and “distribution” simply contemplates some degree of branching and merging within a transportation network.

39. Another possible interpretation is that “field gathering” is intended to fall under the umbrella of the *transportation* of oil, but remains outside the umbrella of the *transmission* of gas.

This would reconcile the apparent conflict between the terms “gathering” in the Regulation and “transmission” in the Act, which have starkly different technical meanings within the industry; however, if the Regulation were intended to encompass true “gathering” pipelines (i.e., limited-life pipelines that gather oil or gas from a well until it is depleted), then it would be nonsensical and unfair to assess their value using exactly the same formula as distribution pipelines, given the dramatic differences in the true economic value of the two types of pipelines. An interpretation of the *General* regulation that is illogical and oppressive (i.e., resulting in pipelines being assessed at 52-fold their true economic value) should be avoided.

40. The valuation and taxation by MPAC of the Pipelines is predicated on an incorrect and overly broad interpretation of section 25(1) of the *Assessment Act*. Correctly interpreted, consistent with the scheme and context of the Act and common sense, section 25(1) specifically applies to transportation and transmission pipelines, to the exclusion of limited-life gathering pipelines.

#### **PART IV - ORDER REQUESTED**

41. Lagasco requests an order declaring that the Pipelines, as gathering lines, are not “pipe lines” within the meaning of section 25 of the *Assessment Act*, and were not “pipe lines” within the meaning of section 25 of the *Assessment Act* at any time on or after January 1, 2015.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF OCTOBER, 2020**

per   
BENNETT JONES LLP

## **SCHEDULE "A"**

### **LIST OF AUTHORITIES REFERRED TO**

1. *Capcorp Planning (2003) Inc. v. Ontario (Finance)*, 2018 ONCA 406
2. *Burlington Resources Canada Ltd. v. Peace River (Assessor of Area #27)*, 2005 BCCA 72
3. *Wawanesa Mutual Insurance Company v. Axa Insurance (Canada)*, 2012 ONCA 592
4. *AstraZeneca Canada Inc. v. Canada (Minister of Health)*, 2006 SCC 49

## **SCHEDULE "B"**

### **TEXT OF RELEVANT LEGISLATIVE PROVISIONS**

Assessment Act, R.S.O. 1990, c. A.31

#### **Regulations by the Minister**

**2** (2) The Minister may make regulations,

(d) governing the assessment of pipelines and providing for the depreciation of the assessed values of pipelines;

#### **Pipe line**

**25** (1) In this section,

“gas” means natural gas, manufactured gas or propane or any mixture of any of them;

“oil” means crude oil or liquid hydrocarbons or any product or by-product thereof;

“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, and includes,

- (a) all valves, couplings, cathodic protection apparatus, protective coatings and casings,
- (b) all haulage, labour, engineering and overheads in respect of such pipe line,
- (c) any section, part or branch of any pipe line,
- (d) any easement or right of way used by a pipe line company, and
- (e) any franchise or franchise right,

but does not include a pipe line or lines situate wholly within an oil refinery, oil storage depot, oil bulk plant or oil pipe line terminal;

“pipe line company” means every person, firm, partnership, association or corporation owning or operating a pipe line all or any part of which is situate in Ontario.

#### **Notice**

(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.

#### **Disputes**

(3) All disputes as to whether or not a gas pipe line is a transmission pipe line shall, on the application of any interested party, be decided by the Ontario Energy Board and its decision is final.

General, O Reg 282/98 under the *Assessment Act*

**PART II  
CLASSES OF REAL PROPERTY**

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

**PART VIII  
ASSESSMENT OF PIPE LINES**

**Assessed Value for Specified Years**

**41** (1) For the 2017, 2018, 2019 and 2020 taxation years, the assessed value of a pipe line shall be determined as follows:

1. The length of the pipe line in feet shall be multiplied by the applicable rate in Table 1, 2 or 3 of Part X. Table 1 applies to offshore pipe lines. Table 2 applies to plastic field gathering pipe lines and plastic distribution pipe lines. Table 3 applies to other pipe lines.
2. The amount determined under paragraph 1 shall be depreciated by reducing the amount by the applicable percentage in Table 4 for offshore pipe lines and in Table 5 for plastic field gathering pipe lines, plastic gas distribution pipe lines and other pipe lines.
3. After the reduction under paragraph 2, \$250 shall be added for each connection to an end user. O. Reg. 338/12, s. 1; O. Reg. 397/16, s. 3.

(2) If Table 1, 2 or 3 applies, but the outside diameter of the pipe line is not included in the Table, the applicable rate for the purposes of paragraph 1 of subsection (1) is the rate for the closest outside diameter or range of outside diameter that is included in the Table.

*Technical Standards and Safety Act, 2000, SO 2000, c 16.*

**Temporary codes, etc., testing organizations, variances**

**36** (3) A director may, in writing,

- (a) authorize, subject to such conditions as may be specified and for a limited time, the use of codes, standards, guidelines or procedures or changes to codes, standards, guidelines and procedures necessary to accommodate new developments or technological advances and require compliance with them and permit, subject to such conditions as may be specified, variances from them;
- (b) designate organizations to test any thing for which standards or specifications are established under this Act and provide for and require the placing of the organization's label on the thing or any parts of the thing that conform to the standards and specifications;
- (c) subject to such conditions as he or she may specify, allow a variance from any regulation, Minister's order or alternate rule if, in his or her opinion, the variance would not detrimentally affect the safe use of the thing to which the regulation, Minister's order or alternate rule applies or the health or safety of any person.

*Oil, Gas and Salt Resources Act, R.S.O. 1990, c. P.12*

**Definitions**

**1** (1) In this Act,

“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;