



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

**BY EMAIL**

October 20, 2020

Ms. Christine E. Long  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto ON M4P 1E4

Dear Ms. Long:

**Re: Lagasco Inc.  
Pipeline Classification Application  
OEB Staff Submission  
Ontario Energy Board File Number: EB-2019-0166**

In accordance with Procedural Order No. 3 please find attached the OEB staff submissions for the above proceeding. This document has been sent to Lagasco Inc. and to all other registered parties to this proceeding.

Lagasco Inc. is reminded that its reply submission is due by November 2, 2020, should it choose to file one.

Yours truly,

*Original Signed By*

Ritchie Murray  
Project Advisor, Natural Gas Applications

c. Applicant and intervenors

Encl.



## **OEB Staff Submission**

### **Pipeline Classification Application**

**Lagasco Inc.**

**EB-2019-0166**

**October 20, 2020**

# 1 INTRODUCTION

## 1.1 Overview of Application

On May 25, 2020, Lagasco Inc. (Lagasco) applied to the Ontario Energy Board (OEB) for an order declaring that the natural gas pipelines owned by Lagasco in Haldimand County are not "pipe lines" within the meaning of section 25(1) of the *Assessment Act*, R.S.O. 1990 (Assessment Act), and were not "pipe lines" within the meaning of the Assessment Act at any time on or after January 1, 2015.

The Application is triggered by a dispute between Lagasco and the Municipal Property Assessment Corporation (MPAC) with respect to whether or not the Pipelines are "pipe lines" as defined in the Assessment Act. Lagasco asserts that the pipelines are natural gas production "gathering lines" and should not be subject to municipal taxes as "pipe lines". MPAC maintains that the pipelines are appropriately assessed as "pipe lines" for the purposes of municipal taxation<sup>1</sup>.

Lagasco is a corporation under the laws of the Province of Ontario and is in the oil and gas production business. Lagasco is not an OEB rate regulated natural gas distribution company. Lagasco does not possess a certificate of public convenience and necessity nor does it hold any municipal franchise agreements issued by the OEB. Lagasco does not hold a gas distributor license from the Technical Standards and Safety Authority (TSSA).

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.

Section 25(1) of the Assessment Act, defines a "pipe line" as follows:

"pipe line" means a pipe line for the transportation or transmission of gas that is designated by the owner as a transmission pipe line ..."

Section 25(3) of the Assessment Act states:

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.

More complete excerpts from the Assessment Act are provided in Appendix A.

---

<sup>1</sup> For clarity, "pipeline" and "pipe line" are alternative spellings for pipeline.

## The Lagasco Pipelines

In November 2018, Lagasco purchased various assets 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>. Among the assets purchased were the natural gas pipelines in Haldimand County that are the subject of this application (Lagasco Pipelines). Lagasco is now responsible for certain liabilities respecting the Pipelines, including municipal taxes.

Lagasco states that the Lagasco Pipelines located in Haldimand County are part of an overall natural gas gathering system used in the production of natural gas that is located throughout several regions of Ontario. Some of the Lagasco Pipelines are located onshore and some are located offshore in Lake Erie. The overall gathering system includes a network of smaller gathering lines that transport natural gas from the production wells to a larger gathering line (Main Pipeline), which in turn transports the natural gas to Lagasco's treatment facility. The Main Pipeline is composed of steel pipelines that range in diameter from six to eight inches. At the treatment facility, the natural gas is cleaned and conditioned in order to meet the local natural gas utility's quality standards. The natural gas is then transported by pipeline from the treatment facility to a metering site where it is sold to the local natural gas utility (i.e., Enbridge Gas Inc.) to become part of the natural gas in the utility's transmission pipeline system. Lagasco's overall gathering system also includes a compressor station that increases the pressure of the natural gas to that of the utility's transmission pipeline pressure. Lagasco also owns the natural gas production wells that are connected by the gathering system.

Lagasco provided excerpts from the Canadian Standards Association (CSA) Z662 *Oil and gas pipeline systems (Z662)*. This standard applies to pipeline design, construction, operation and maintenance. The CSA Z662 has been adopted for use in Ontario by the TSSA. The excerpts include definitions for the terms "gathering lines" and "transmission lines", which Lagasco argues are more appropriate definitions than those in the Assessment Act. Lagasco asserts that, in the natural gas industry across Canada, "gathering lines" are generally known to be smaller diameter pipelines with shorter-life spans that gather natural gas from wells and transport it to transmission lines. Lagasco asserts that "transmission lines" are known to be more robust in nature, with larger diameters, higher operating pressures, and longer life spans. Lagasco asserts that

---

<sup>2</sup> This is a federal statute that allows insolvent corporations owing their creditors in excess of \$5 million to restructure their business and financial affairs.

transmission pipelines are subject to specific cathodic protection and annual inspection requirements.

Lagasco engaged Bennett Jones LLP to investigate, analyze and provide an opinion in the form of an “expert report” on the classification of the Pipelines (Report). The Report examines the Canadian Energy Regulator’s pipeline definitions, and the differences between natural gas gathering pipelines and transmission pipelines from an economic perspective (e.g., the link between pipeline function and life span, capacity contracting, and asset valuation). The Report concludes that there are fundamental differences between gathering pipelines and transmission pipelines.

Lagasco asserts that during the relevant taxation years, neither Lagasco nor Dundee made a designation under subsection 25(1) of the Assessment Act identifying the Pipelines as “transmission pipe lines”.

### **Assessment Appeals**

Beginning in 2015, Dundee began to appeal the MPAC’s property assessment notices for the Pipelines. These appeals were stayed by the Assessment Review Board pending the resolution of an OEB proceeding that was initiated by Tribute Resources Inc. in 2015 (see further discussion below).

As part of its due diligence prior to acquiring the Pipelines, Lagasco obtained copies of the MPAC property assessment notices (or summaries thereof) for the 2015 to current taxation years (Assessments). It is Lagasco’s position that the Pipelines are strictly gathering lines, and that none of the Pipelines have been or is a pipeline within the meaning of section 25 of the Assessment Act, and therefore the Assessments are incorrect<sup>3</sup>.

Lagasco estimates that the Pipelines accounted for approximately \$1.1 million of the total purchase price paid for Dundee’s assets. However, Lagasco states that the Pipelines were excessively assessed for taxation purposes 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 asserts that the misclassification of the Pipelines as “pipe lines” under section 25 of the Act leads to their assessed value increasing over time.

### **Similar Case: Tribute Resources Inc.**

On June 22, 2015, Tribute Resources Inc. (Tribute) filed an application with the OEB under section 25(3) of the Assessment Act requesting an order declaring that certain

---

<sup>3</sup> Lagasco maintains the same position for its similar pipelines located elsewhere in Ontario outside of Haldimand County.

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<sup>4</sup>. Tribute filed the application due to a dispute between it and MPAC about whether the Tribute Pipelines are “pipe lines” as defined in the Assessment Act.

Tribute is an Alberta corporation that is permitted to carry on business in the Province of Ontario. It is in the gas production business and is not an OEB rate regulated gas distribution company.

Tribute argued that the Tribute Pipelines are used for gathering natural gas from production wells and then conveying it to a transmission pipeline, and that, by industry definition, they are not transmission pipelines. Further, Tribute argued that the Tribute Pipelines were never designated transmission pipelines by it or any previous owner. Tribute’s position was that the Tribute Pipelines should not be assessed, and therefore not subject to municipal taxes as “pipe lines”.

In its decision and order (Tribute Decision), the OEB determined that the Tribute Pipelines are appropriately assessed as pipelines under the Assessment Act. Among other things, the OEB found that the only definitions that matter in the context of taxation are those of the Assessment Act.

Tribute appealed the Tribute Decision to the Divisional Court. The appeal was dismissed.

## **1.2 Process to Date**

In its current application, Lagasco requested an oral hearing.

A Notice of Hearing was issued on June 22, 2020. The Municipal Property Assessment Corporation (MPAC), the Ontario Petroleum Institute (OPI) and a number of jointly represented municipalities being the County of Elgin, County of Lambton, Haldimand County, Municipality of Bayham, Municipality of Central Elgin, Municipality of Chatham-Kent, Municipality of Dutton Dunwich, Municipality of West Elgin, Township of Malahide and the Township of Southwold (the Municipalities) applied for intervenor status. Lagasco did not file any objections to the intervention requests.

Procedural Order No. 1 was issued on July 17, 2020. MPAC, OPI and the Municipalities were granted intervenor status. Procedural Order No. 1 set out timelines for a written hearing such that the interrogatory stage would be complete by August 10, 2020, and the submission stage would be complete by September 7, 2020.

---

<sup>4</sup> EB-2015-0206

MPAC filed its written evidence on July 30, 2020.

Procedural Order No. 2 was issued on August 10, 2020. The OEB found that it would be assisted in its decision by providing for intervenor evidence in this proceeding and submissions on the merits of an oral hearing. Except for interrogatory responses from the applicant, the procedural schedule set forth in Procedural Order No. 1 was cancelled and replaced by a revised schedule that provided for the filing of intervenor evidence, interrogatories and responses on that evidence, and submissions on the merits of holding an oral hearing versus a written hearing or an electronic hearing.

On September 8, 2020, Lagasco, MPAC and OEB staff filed submissions on the merits of holding an oral hearing versus a written hearing or an electronic hearing.

Procedural Order No. 3 was issued on September 23, 2020. The OEB found that that there would be no benefit to an oral hearing. Procedural Order No. 3 set out timelines for a written hearing that included an Argument in Chief from Lagasco, submissions from OEB staff and intervenors, and reply submission from Lagasco.

On October 20, 2020, the Municipalities made a filing that included both a set of supplementary interrogatories to Lagasco and Lagasco's responses.

Lagasco's reply submission is due by November 2, 2020.

## 2 SUBMISSIONS

There is only one question before the OEB in this proceeding: are the Lagasco Pipelines “pipe lines” within the meaning of section 25(1) of the Assessment Act? The applicant Lagasco argues that they are not, MPAC (and to the best of OEB staff’s understanding of the Municipalities’ position) argue that they are. The OEB is empowered to settle this dispute by section 25(3) of the Assessment Act: “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.”

Section 25(1) defines “pipe line” as “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...” With respect to gas<sup>5</sup>, therefore, section 25(1) establishes two conditions for a pipeline to be considered a “pipe line”: 1) the pipeline is used for the transportation or transmission of gas; and 2) the pipeline was designated by the owner as a transmission pipeline.

Both Lagasco and MPAC have pointed to the importance of the OEB’s decision in this case. Lagasco argues that classifying the Lagasco Pipelines as “pipe lines” is fundamentally unfair, as the assessed value for pipelines under the regulations to the Assessment Act is fundamentally at odds with the actual value of the Lagasco Pipelines, and threatens the viability of both Lagasco and similar energy companies<sup>6</sup>. MPAC notes in its evidence (OEB staff has not yet seen MPAC’s final argument) that a decision that the Lagasco Pipelines are not “pipe lines” could impact the assessment of other pipelines. Further, if the Lagasco Pipelines are not “pipe lines” they would still be subject to municipal taxation, but these taxes would be paid not by Lagasco but by the thousands of individual property owners under whose land the Lagasco Pipelines run<sup>7</sup>.

OEB staff notes that municipal tax rates paid by Lagasco (or individual property owners) are a matter of taxation policy and are set primarily by regulations under the Assessment Act and administered by MPAC. The OEB’s only role is to determine if the Lagasco Pipelines are “pipe lines” within the meaning of the Assessment Act.

### **Are the Lagasco Pipelines used for the transportation or transmission of natural gas?**

---

<sup>5</sup> The Assessment Act defines “gas” to include “natural gas”. The parties to this proceeding all agree that the Lagasco Pipelines convey natural gas.

<sup>6</sup> Lagasco argument in chief, paras. 1-3

<sup>7</sup> MPAC response to OEB staff interrogatories 1(c) and 1(d)



It is well established that the proper 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>8</sup>.

Lagasco argues that the Lagasco Pipelines are not used for the transportation or transmission of gas. Lagasco views the Lagasco Pipelines to be “gathering” pipelines, which they argue has a distinct meaning from transportation or transmission pipelines, and that the Lagasco Pipelines are therefore not “pipe lines” within the meaning of the Assessment Act. Lagasco argues that there is a well understood industry distinction between gathering pipelines and transmission pipelines: “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 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.” Lagasco further notes that other regulations (in this case O. Reg. 210/01 under the *Technical Standards and Safety Act*) include separate definitions for the two terms. Lagasco argues that by using the words transmission and transportation, the Assessment Act has intentionally excluded gathering pipelines from the definition of “pipe line”<sup>9</sup>.

The OEB has considered the issue of pipeline classification under section 25(1) in a very similar case involving Tribute Resources Inc. (Tribute Decision)<sup>10</sup>. In that case the applicant Tribute Resources Inc. (Tribute) argued that its pipelines were not used for the transportation or transmission of gas, but were in fact “gathering” pipelines and therefore not pipelines within the meaning of the Assessment Act. Tribute pointed to several definitions used in the gas industry in support of this position. Tribute’s arguments were very similar to the arguments tendered by Lagasco in the current case.

The OEB held that Tribute’s pipelines were in fact “pipe lines” within the meaning of the Assessment Act. The OEB stated: “[t]he language of 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.”<sup>11</sup>

---

<sup>8</sup> See, for example, *Capcorp Planning (2003) Inc. v. Ontario (Finance)*, 2018 ONCA 406, at para. 41

<sup>9</sup> Lagasco argument in chief, paras. 25-31

<sup>10</sup> EB-2015-0206 Decision and Order, May 5, 2016

<sup>11</sup> Tribute Decision, page 6

Tribute appealed the OEB's decision to the Divisional Court. That appeal was dismissed in a unanimous decision dated January 22, 2018. Speaking for the Court, Fregeau J. noted: [w]hat is implicit in these findings is that the OEB found no reason to go outside of the plain and ordinary meaning of the words used in the statute. Put another way, the OEB found no reason to apply the technical meaning and understanding of the words as they are used in the oil and gas industry. This is consistent with the rules of statutory interpretation..."<sup>12</sup> OEB staff observes that the arguments similar to those made by Lagasco in the current case regarding the "fundamentally unfair" valuation of their gathering pipelines if they are considered "pipe lines" under the Assessment Act were also made in front of the Divisional Court by the intervenor the Ontario Petroleum Institute.<sup>13</sup>

In OEB staff's view, there are no material differences in the facts relevant to the Tribute proceeding and those in the current proceeding. The arguments presented by Lagasco are also very similar to those that were presented by Tribute. In the Tribute Decision, the OEB applied the plain and ordinary meaning of the words in the Assessment Act to determine the meaning of "pipe line". The Divisional Court upheld this decision. In the current case, the Lagasco Pipelines are clearly used to "move or transport gas from one location to another." OEB staff sees no compelling reason why the OEB should now adopt a different interpretation in this case. OEB staff submits, therefore, that consistent with the Tribute precedent, the Lagasco Pipelines are used for the transportation or transmission of natural gas, and are therefore "pipe lines" within the meaning of the Assessment Act.

### **Were the Lagasco Pipelines designated by their owner(s) as transmission pipelines?**

The second condition for meeting the definition of "pipe line" under the Assessment Act is whether the pipeline was designated by its owner as a transmission pipeline. Lagasco appears to dispute whether the Lagasco Pipelines were ever designated as a transmission pipeline. Lagasco states: "[d]uring the relevant taxation years, neither Lagasco nor Dundee [the company from which Lagasco purchased the Lagasco Pipelines in 2018] (as applicable) made a designation under subsection 25(1) of the Assessment Act identifying the [Lagasco Pipelines] as 'transmission pipe lines'..."<sup>14</sup> OEB staff understands that the "relevant taxation years" are 2015-2020. However, it is not clear to OEB staff whether Lagasco is stating only that neither Lagasco nor Dundee

---

<sup>12</sup> Tribute Resources Inc. v. Ontario Energy Board, 2018 ONSC 265 (Divisional Court Decision), para. 52

<sup>13</sup> *Ibid.*, paras. 32-43

<sup>14</sup> Lagasco argument in chief, para. 12

designated the Lagasco Pipelines as transmission pipelines from 2015-2020, or that they were never so designated at all (i.e. by Dundee or any owners prior to 2015).

According to the evidence filed by MPAC, the individual pipelines that comprise the Lagasco Pipelines were installed at various times from the 1950s through to the early 2000s<sup>15</sup>. They were not owned by Lagasco during that time, and OEB staff does not know if they were owned (in whole or in part) by Dundee during any of this time.

MPAC's evidence states that "MPAC's standard procedure when advised by owners that they have installed new pipe lines is to confirm the location, type, pipe diameter and length, and year installed. Once this information has been confirmed, MPAC adds the new pipe line to the assessment roll for the municipality."<sup>16</sup> MPAC does not have any of the original documentation from the (then) Lagasco Pipeline owners in which they designated the Lagasco Pipelines as transmission pipelines. MPAC explained that under its current record retention policy (which has varied somewhat over the years), documents are kept for the year of filing plus three years. As the time of designation for the Lagasco Pipelines was from approximately 17-70 years ago, MPAC no longer has these records. MPAC further explained that it receives extensive amounts of records, and that once the first post-designation assessment has been made and not appealed, there is no need for MPAC to retain the designation document(s) in its files<sup>17</sup>.

Based on the information provided by MPAC, it appears to OEB staff that the Lagasco Pipelines were designated by their then owners as transmission pipelines at the time they were installed. In OEB Staff's view, had they not been so designated they would not have been entered by MPAC as such on the municipal assessment rolls. To the extent an error had been made, the then owners would have had the ability to appeal the designation after the first assessment of the pipelines, which does not appear to have happened (or if it did happen it was not successful). OEB staff therefore submits that the evidence supports the conclusion that the Lagasco Pipelines meet the second part of the definition of "pipe lines" under the Assessment Act.

OEB staff notes that the Tribute Decision reached a similar conclusion based on similar evidence, and that this decision was upheld by the Divisional Court<sup>18</sup>.

---

<sup>15</sup> Affidavit of Ryan Ford, Exhibit A

<sup>16</sup> Affidavit of Ryan Ford, para. 9

<sup>17</sup> MPAC response to OEB staff interrogatories 3(e) and 3(d)

<sup>18</sup> Tribute Decision, pages 6-7; Divisional Court decision, paras. 55-56

### **3 CONCLUSION**

OEB staff submits that based on the evidence in this proceeding, it appears that the Lagasco Pipelines are natural gas “pipe lines” within the meaning of section 25(1) of the Assessment Act.

*All of which is respectfully submitted.*

## **Appendix A – Excerpts from the Assessment Act**

### **Pipe line**

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

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

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

“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; (“pipeline”)

“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. (“compagnie de pipeline”) R.S.O. 1990, c. A.31, s. 25 (1).

### **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. 2004, c. 31, Sched. 3, s. 8; 2006, c. 33, Sched. A, s. 16 (1).

### **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. R.S.O. 1990, c. A.31, s. 25 (3).

### **Assessment of pipe line**

(4) Despite any other provisions of this Act, a pipe line shall be assessed for taxation purposes in accordance with the regulations. 1997, c. 5, s. 16 (1).