

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

**SUMMARY OF THE SUBMISSIONS FOR ORAL ARGUMENT
OF THE INTERVENORS,
THE MUNICIPALITY OF CHATHAM-KENT, THE COUNTY
OF ELGIN, HALDIMAND COUNTY, THE COUNTY OF
LAMBTON, THE CORPORATION OF THE MUNICIPALITY OF
BAYHAM, THE CORPORATION OF THE TOWNSHIP OF MALAHIDE,
THE CORPORATION OF THE MUNICIPALITY OF CENTRAL ELGIN,
THE CORPORATION OF THE TOWNSHIP OF SOUTHWOLD,
THE CORPORATION OF THE MUNICIPALITY
OF DUTTON DUNWICH, and THE CORPORATION OF THE
MUNICIPALITY OF WEST ELGIN (the “Municipalities”)**

(November 25, 2020)

1. It is the Municipalities' position that the application by Lagasco Inc. (the "**Application**") should be dismissed.

1) The Decisions in the *Tribute* Matter

2. The issues raised in the Application are indistinguishable from those in an application decided by the Board in *Re Tribute Resources Inc.* as recently as 2016¹. The natural gas "gathering pipelines" owned by Lagasco, as described in the evidence (the "**Pipelines in Issue**"), are materially the same in nature and function as those owned by Tribute Resources Inc. ("**Tribute**"), as described in Tribute's application. The Board held in *Tribute (OEB)* that the "gathering pipelines" of the kind in issue are "pipe lines" as defined in s. 25(1) of the *Assessment Act* (the "**Act**"). The Board's decision was upheld on appeal to the Divisional Court².

3. The Municipalities submit that there is no reason for the Board to depart from the decisions in *Tribute (OEB)* and *Tribute (Div Ct)* in the present case. Rather, the Board is bound by the decision in *Tribute (Div Ct)*, and it must apply that decision here.

4. The Municipalities disagree with Lagasco's submission that the evidence before the Board in Tribute's application was materially different. The evidence as to the nature and function of the Pipelines in Issue, and as to their designation as transmission pipelines, is identical to the evidence in *Tribute (OEB)*. The Board found that such evidence was sufficient for it to determine that Tribute's pipelines were so designated.

5. Finally, with respect to Lagasco's submission that a different conclusion than that in *Tribute (OEB)* is warranted based on expert evidence of Rob Koller of Deloitte LLP (the "**Koller Report**"), the Municipalities maintain that this evidence is irrelevant to the Board's role in this Application.

2) The Board's Role in the Context of Pipeline Assessment

6. The Board's role and jurisdiction under s. 25 of the *Act* is a limited one. Specifically, the Board's jurisdiction is limited to resolving the disputes captured by ss. 25(3), which are disputes

¹ Decision and Order, EB-2015-0206 *Re Tribute Resources Inc.* dated May 5, 2016 ("**Tribute (OEB)**").

² *Tribute v. OEB*, 2018 ONSC 265 (Div. Ct.) ("**Tribute (Div Ct)**").

about whether a given gas pipeline does or does not fall within the words “a pipe line for the transportation or transmission of gas that is designated by the owner as a transmission pipe line” in the definition of “pipe line” in ss. 25(1). The issue before the Board in this case “is primarily one of statutory interpretation”.³

7. The Municipalities agree that the Board’s interpretation must be informed by its statutory jurisdiction and objectives as set out in the *Ontario Energy Board Act*. However, the Board should recognize that it does not have a role in deciding how any property, including the Pipelines in Issue, should be *assessed*, nor how it should be *taxed*. All such aspects of assessment and taxation are specifically remitted to the expertise and jurisdiction of other statutory bodies. The *Act* and related legislation constitute a complete code for assessment and taxation of property in Ontario.

3) The Economic Impacts of s. 25 are not Relevant to the Board’s Role

8. Lagasco’s evidence and submissions to the Board that the assessment and taxation of the Pipelines in Issue is “excessive” or “uneconomic”, including the Koller Report, should be rejected as irrelevant to the interpretive role of the Board. If the Board’s definitive interpretation of section 25 of the *Act* in *Tribute (OEB)* gives rise to adverse economic or business impacts for Lagasco, the recourse with respect to such impacts rests with the legislature (or other appropriate bodies, as provided in the legislation), and not with the Board.

9. If the Board accepts Lagasco’s submissions on this point, the Board must also recognize that granting the Application may entail adverse impacts on other stakeholders, such as the Municipalities and owners of the real property on which the pipelines are situated (including changes to any negotiated allocation of the municipal tax liability between the prior owners of the Pipelines in Issue and the property owners).

4) Statutory Interpretation of s. 25(1) of the *Act*

10. The Municipalities accept the general approach to statutory interpretation which comes from Driedger’s *Construction of Statutes*, as mandated by the Supreme Court of Canada:

³ The Board’s Procedural Order No. 3 dated September 23, 2020 in the Application.

Today there is only one principle or approach; namely, the words of an Act are to be read 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 Parliament.

11. That formulation was specifically adopted and applied by the Divisional Court in *Tribute (Div Ct)*, including the Supreme Court’s confirmation that this approach is “applicable to statutes dealing with technical or scientific matters”⁴. This is not a case where s. 25(1) of the *Act* is ambiguous, or “remains ambiguous” after applying this general approach to statutory interpretation, such that any special rules of construction related to taxing statutes need to be employed. This Board has already found the language in ss. 25(1) to be “clear and unambiguous”.⁵ The Divisional Court has upheld that finding.⁶

12. The Municipalities submit that this Board should again reject the arguments that seek to read technical or industry meanings of words into s. 25 of the *Assessment Act*. The same arguments, based on the *CSA Standard* and the *Oil, Gas and Salt Resources Act*, were made in the *Tribute* matter, and were not accepted either by the Board or by the Divisional Court.

13. Lagasco’s reliance on any technical or industry meaning of the word “transmission” is not supported by the words used in s. 25 of the *Act* itself. To the contrary, “pipe line” for the purposes of ss. 25(1) is expressly defined more broadly to mean a pipeline “for the **transportation or** transmission of gas” (emphasis added). As the Board noted in *Tribute (OEB)*, “transportation” of gas, in the ordinary meaning of that word, is broad enough to include “gathering” lines such as the Pipelines in Issue, because they “are used to move or transport gas from one location to another”.⁷

14. The Board in *Tribute (OEB)* also specifically found that the classification of different pipelines in the General Regulation under the *Act*⁸ made it clear that the general term “pipe line” used in s. 25 includes “gathering lines as well as transportation and transmission lines [...]”.⁹

⁴ *Tribute (Div Ct)*, at paras. 52-53, citing *Pfizer Co. Ltd. v. Deputy Minister of National Revenue*, [1977] 1 S.C.R. 456 at p. 460.

⁵ *Tribute (OEB)*, at p. 6.

⁶ *Tribute (Div Ct)*, at paras. 51-54.

⁷ *Tribute (Div Ct)* at para. 51 and *Tribute (OEB)* at pp. 5-6.

⁸ O. Reg. 282/98.

⁹ *Tribute (OEB)* at p. 6.