

**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**

**SUBMISSION OUTLINE OF THE APPLICANT, LASGASCO INC.**

**(November 25, 2020)**

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**Issue #1:** *To what extent is the Board bound by its previous decision in the Tribute matter?*

- The Board, as an administrative tribunal, is not bound by its previous decisions; it is obligated to address the conflict before it in the way it judges to be most appropriate.<sup>1</sup> The Divisional Court dismissed an appeal of the Board's decision in *Tribute* as a matter of deference to the Board's subject matter expertise. The appeal would have been dismissed even if the Board had reached the opposite conclusion. In any event, as set out below, the evidence before the Board in this application is materially different and more compelling than the evidence in the *Tribute* matter (which was itself sufficient for the OEB Staff to advocate against classifying gathering pipelines as "pipe lines"), and there is good reason to depart from that decision.

**Issue #2:** *Does the evidence demonstrate a designation by the "owner" of the Pipelines as "gas transmission pipe lines"?*

- A designation by the owner is an essential prerequisite of the statutory definition of "pipe line", and there is no evidence of any kind before the Board that such a designation has been made in respect of the Pipelines at issue.
- In the *Tribute* proceeding, the Board concluded that the pipelines were designated by the owner in 2004, based on evidence that the assessment rolls were created in 2004, and assuming that no such rolls would have been created without a designation by the owner. In this case, the pipelines at issue were installed as early as 1957, and there is no evidence as to when any of the assessment rolls were created. In older versions of the *Assessment Act*, a pipeline could be assessed and taxed *without* a designation by the owner. Even if the Board's assumption was justified in *Tribute* (which is doubtful), it is not justified here.

**Issue #3:** *If the Board concludes that the Pipelines were designated as "gas transmission pipelines" by a previous owner several decades ago, is Lagasco bound by that designation?*

- In the *Tribute* proceeding, the Board did not turn its attention to whether a designation made by a previous owner—even if there was evidence of one—remains binding on a subsequent

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<sup>1</sup> Ontario Medical Association v. Ontario (Information and Privacy Commissioner), 2017 ONSC 4090 (Div Ct) at ¶20, aff'd 2018 ONCA 673 at ¶14, Lagasco Supplemental BOA, Tab 6.

owner. There is specific evidence before the Board that both Lagasco and the previous owner of the Pipelines (Dundee) did not designate the Pipelines, and to the contrary that they have consistently maintained an objection to their classification.

- The *Assessment Act* expressly provides for annual reporting by a pipeline owner as to "all of its transmission pipe lines", in the same section that it defines a "pipe line" as one that is [not "was"] designated by the [not "an"] owner as a "transmission pipe line". This plainly contemplates that the designation of a pipeline by its current owner is an annual matter. There is no plausible basis for imposing a possible designation made decades ago, if any, by an un-named previous owner of the Pipelines, and purporting to bind all subsequent owners with that election in perpetuity. To do so conflicts with the plain language of the *Assessment Act*.

**Issue #4:** *What is the significance of the term "transportation" in the definition of "pipe line"?*

- The undisputed evidence is that "transmission" has a recognized industry meaning that is distinct from "gathering". The responding submissions focus on the more vague term, "transportation". Lagasco maintains that transportation is also distinct from gathering—it connotes a primary purpose of movement—but to the extent the Board finds that there is a meaningful distinction between "transportation" and "transmission", it is important to note that s. 25 of the *Assessment Act* exclusively uses the term "transmission" in describing: (1) the required designation by the owner ("as a *transmission* pipe line"), (2) the required annual reporting to MPAC ("of all of its *transmission* pipe lines"), and (3) the disputes to be resolved by the Board, ("as to whether or not a gas pipe line is a *transmission* pipe line"). Therefore, the relevant definition that a pipeline must meet under section 25(1) is *transmission*, rather than transportation.

**Issue #5:** *In interpreting the definition of "pipe lines" in the Assessment Act, is it proper for the Board, as the primary energy regulator in Ontario, to consider that the respondents' (and OEB Staff's) proposed interpretation leads to absurd consequences that are destructive of the oil and gas industry in Ontario?*

- It is a foundational principle of statutory interpretation that the Legislature does not intend to produce absurd consequences. The evidence before the Board in this application—and notably,

not before the Board in the *Tribute* matter—demonstrates that the classification of *gathering* pipelines as "transmission" pipelines leads to a patent absurdity: pipelines being **assessed and taxed at more than 50 times their true market value**. That simply cannot have been the Legislature's intent.


- This absurdity is a consequence of fundamental differences in the economic value of gathering pipelines, which function to extract a depleting resource in diminishing volumes, versus transmission pipelines, which are used to move a consistent volume of resources from point A to point B over an almost indefinite period. Failure to recognize this distinction leads to absurd disparities between assessed value and true value, which the Legislature cannot have intended. The potential disparity is particularly severe for pipelines attached to older wells, outputting oil and gas at diminished rates, of which there will be an increasing number in the coming years. If these gathering pipelines are classified and assessed as "transmission" pipelines, then they will not be economically viable, and oil and gas companies will need to abandon them prematurely. This situation—which is more than just a mere hypothetical: **(i)** leads to natural resources being wasted, **(ii)** artificially introduces scarcity that will affect consumer pricing, **(iii)** leads to wells becoming economically unviable prematurely, thus requiring abandonment at significant cost, **(iv)** drives oil and gas companies in Ontario into insolvency; and **(v)** poses significant environmental risks.

- The Legislature delegated jurisdiction over pipeline classification disputes to the Board, a body with specialized subject matter expertise and a statutory mandate to, among other things, "facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas", and to protect consumers' interests with respect to "prices and the reliability and quality of gas service". It is entirely appropriate for the Board to apply its subject matter expertise and consider its mandate in resolving this application; indeed, it is expected.<sup>2</sup>

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<sup>2</sup> In *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, [2016 SCC 47](#) (referred to in the *Tribute* Divisional Court decision), the Supreme Court approved of a tribunal applying its overarching statutory duties when resolving disputes (¶46-47). In *Ontario (Energy Board) v. Ontario Power Generation Inc.*, [2015 SCC 44](#), the Supreme Court framed one of the OEB's tribunal functions (approving utility costs) as a **tool** for achieving its statutory mandate, and judged reasonableness by considering the consistency of the decision with the OEB's mandate (¶11-20, 76 and 120).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 2nd DAY OF NOVEMBER,  
2020**

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