



# ONTARIO ENERGY BOARD

**FILE NO.:** EB-2019-0166 Lagasco Inc.

---

**VOLUME:** 1

**DATE:** December 2, 2020

**BEFORE:** Susan Frank Presiding Commissioner  
Michael Janigan Commissioner  
Robert Dodds Commissioner

THE ONTARIO ENERGY BOARD

Lagasco Inc

Lagasco Inc. has applied to the Ontario Energy Board for an order declaring that the natural gas pipelines owned by Lagasco Inc. in Haldimand County 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.

Oral Hearing held by videoconference  
from 2300 Yonge Street,  
25th Floor, Toronto, Ontario,  
on Wednesday, December 2, 2020,  
commencing at 9:31 a.m.

-----  
VOLUME 1  
-----

BEFORE:

SUSAN FRANK	Presiding Commissioner
MICHAEL JANIGAN	Commissioner
ROBERT DODDS	Commissioner

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
RITCHIE MURRAY	Board Staff
RUDRA MUKHERJI	
CHERIDA WALTER	
ASTRIT SHYTI	
 RICHARD SWAN	 Lagasco Inc.
WILLIAM BORTOLIN	
 KAREY LUNAU	 Municipal Property Assessment Corporation (MPAC)
 JIM McINTOSH	 Ontario Petroleum Institute (OPI)
M. PHILIP TUNLEY	The Municipalities (Municipality
KATHLEEN POOLE	of Chatham-Kent, Country of Elgin, Haldimand County, County of Lambton Municipality of Bayham, Township of Malahide, Municipality of Central Elgin, Township of Southwold, Municipality of Dutton Dunwich, and the Municipality of West Elgin)

I N D E X     O F     P R O C E E D I N G S

<u>Description</u>	<u>Page No.</u>
--- On commencing at 9:31 a.m.	1
Preliminary Matters	2
Appearances	2
Submissions by Mr. Swan	3
Submissions by Ms. Lunau	24
--- Recess taken at 11:05 a.m.	49
--- On resuming at 11:25 a.m.	50
Submissions by Mr. Tunley	50
Submissions by Mr. McIntosh	66
Submissions by Mr. Millar	77
Reply Submissions by Mr. Swan	86
--- Whereupon the hearing adjourned at 12:35 p.m.	90

E X H I B I T S

<u>Description</u>	<u>Page No.</u>
--------------------	-----------------

NO EXHIBITS FILED IN THIS PROCEEDING.

U N D E R T A K I N G S

Description

Page No.

NO UNDERTAKINGS GIVEN IN THIS PROCEEDING.

1 Wednesday, December 2, 2020

2 --- On commencing at 9:31 a.m.

3 MS. FRANK: Good morning, everyone.

4 MR. SWAN: Good morning.

5 MS. FRANK: The OEB is sitting today on the matter of  
6 an application by Lagasco Inc. Lagasco applied to the OEB  
7 for an order declaring that its natural gas pipelines in  
8 Haldimand County are not pipelines within the meaning of  
9 the section 25(3) of the Assessment act.

10 The application was filed on May 25, 2020. The case  
11 number is EB-2019-0166. The OEB has scheduled oral  
12 arguments to better understand the positions of the  
13 applicant and the intervenors. This videoconference is  
14 being transcribed. It is also being audio-streamed via the  
15 OEB's website.

16 My name is Susan Frank, and I am presiding today.  
17 Along with me are my fellow commissioners, Robert Dodds and  
18 Michael Janigan.

19 I understand that the parties attended a session with  
20 OEB Staff on technical considerations and etiquette for  
21 today. I would like to remind parties to do the following.  
22 Place their microphones on "mute" -- and it looks like most  
23 of you have done that -- and turn their video cameras off  
24 when they are not speaking. Turn off the virtual  
25 backgrounds, if possible. Refrain from asking questions of  
26 each other. The parties are to rely on the existing record  
27 and be ready to display any documents that you wish to  
28 share during your oral arguments.

1 Before we begin, are there any preliminary matters?

2 **PRELIMINARY MATTERS:**

3 MS. LUNAU: Madam Chair, it is Karey Lunau for MPAC  
4 speaking. I just wanted to say I've got a personal family  
5 medical emergency that has arisen this morning, and I am  
6 dealing with it, but I have to be able to be in contact  
7 with my family. So I have to allow a phone to be able to  
8 ring, and I hope that is okay with the Board, but I am  
9 sorry, it is an emergency.

10 MS. FRANK: Quite understandable. No problem.

11 Okay. So anything else? Then we will commence.  
12 Let's have appearances. Lagasco, could you please start.

13 **APPEARANCES:**

14 MR. SWAN: Good morning, Madam Chair. It is Richard  
15 Swan, along with William Bortolin, on behalf of Lagasco.

16 MS. FRANK: MPAC?

17 MS. LUNAU: Madam Chair, it is Karey Lunau, on behalf  
18 of MPAC.

19 MS. FRANK: Thank you. The municipalities, please.

20 MR. TUNLEY: Good morning, Madam Chair. It is Phil  
21 Tunley, on behalf of the municipalities, and with me is  
22 Kathleen Poole as co-counsel. I expect I will do most of  
23 the talking, but if we get deep into assessment matters I  
24 may call on Ms. Poole.

25 MS. FRANK: That's fine. Thank you. OPI?

26 MR. McINTOSH: Good morning, Madam Chair. This is Jim  
27 McIntosh. I am the chairman of the OPI, just as an  
28 intervenor in this case. Thanks.



1 MS. FRANK: Thank you. And staff. Board Staff. Mr.  
2 Millar, you are you are on mute.

3 MR. MILLAR: I started off on the wrong foot. Good  
4 morning, Madam Chair. Michael Millar, counsel for Board  
5 Staff. With me today is Ritchie Murray and Cherida Walter,  
6 and Astrit Shyti is also here in case we have any technical  
7 difficulties, and I think I saw Rudra Mukherji from the  
8 Board secretary's office -- pardon me, the Registrar's  
9 office, keeping an eye on things as well.

10 MS. FRANK: Okay. It seems that we have everybody we  
11 need for this hearing to commence. You will be reminded  
12 that we planned on about 20 minutes for presentations, and  
13 then that will be followed by questions exclusively from  
14 the commissioners.

15 So Mr. Swan, I think we are ready for you to start.

16 **SUBMISSIONS BY MR. SWAN:**

17 MR. SWAN: Thank you very much, Madam Chair and fellow  
18 board members. Let me begin with the following  
19 observations.

20 There is no factual dispute that the pipelines in  
21 issue are gathering lines. There is also no factual  
22 dispute with gathering lines, both as well understood in  
23 the industry and under the CSA standard that is  
24 legislatively adopted under the Ontario Technical Standards  
25 and Safety act, gathering lines in those contexts have a  
26 distinct and different meaning and definition from  
27 transmission pipelines.

28 There is also no factual dispute -- at least not any

1 real one -- that such gathering lines are markedly less  
2 valuable than transmission lines, and, in particular, that  
3 in this case the gathering lines in issue are being  
4 assessed for value and taxed at a rate that is  
5 approximately 50 times their value, as was approved by the  
6 court in the Dundee case in 2018.

7 This great disparity suggests that there is obviously  
8 something wrong, in terms of the manner in which these  
9 pipelines in question, these gathering lines, are being  
10 assessed. And what is wrong is causing an existential  
11 threat to the viability of the oil and gas industry in  
12 Ontario, which this Board is tasked by statute with  
13 ensuring the viability of, and it is also, among other  
14 factors, leading to the insolvency and/or bankruptcy of oil  
15 and gas companies in Ontario at this very moment.

16 There is also no dispute that there is no actual or  
17 direct evidence of any kind that the gathering lines in  
18 issue here were ever designated by the owner as a  
19 transmission line, or transmission lines, which is a  
20 mandatory statutory requirement. And this Board is obliged  
21 to act on the basis of evidence, not on the basis of  
22 supposition.

23 So with that introduction, let me turn to the source  
24 of the issue and with the Board have very close look at the  
25 language of section 25 of the Assessment act. It is found  
26 in a number of places, including in Schedule B of Lagasco's  
27 initial written submissions, but I am also going to ask my  
28 colleague, Mr. Bortolin, to share screen to call up the

1 text of section 25 and the definition of "pipe line".

2       So, thank you, Mr. Bortolin. So let me begin with the  
3 following proposition, which is to note what the definition  
4 of pipe line in section 25(1) does not say. It does not  
5 simply say words to the effect of: A pipeline through  
6 which gas or oil flows. That could have been a simple  
7 definition, if the object was to simply identify a pipe  
8 line through which gas or oil flows. The statute could  
9 have said that. But it does not. There is a more  
10 elaborate definition, and it involves two distinct parts,  
11 each of which is a mandatory part. So let's look at the  
12 definition closely.

13       The statute provides pipe line means -- and I will  
14 pause there to observe that it does not say pipe line  
15 includes, suggesting some broader category, it says "pipe  
16 line means a pipe line" -- and then we come to the first  
17 branch of the test -- "for the" -- and those words mean,  
18 with the purpose of -- "a pipe line for the transportation  
19 or transmission of gas". Transportation or transmission of  
20 gas, in other words having the purpose of the  
21 transportation or transmission of gas. "That", and then  
22 the second part, "is designated" -- it does not say "was  
23 designated" -- "is designated by the owner". Again, I will  
24 pause to say it does not say was designated by an owner, or  
25 any owner, but rather "is designated by the owner as a  
26 transmission pipe line".

27       I will note that whereas the words "transportation" or  
28 "transmission" are used in the first clause, in the second

1 clause only the word "transmission" is used, and it must be  
2 designated by the owner as a transmission pipeline.

3 And the remainder of the introductory part of the  
4 definition relates to oil, which is not in issue in this  
5 case.

6 So I pause there -- and there are some exclusions. I  
7 pause there and ask the question as follows: The statute  
8 requires that for a pipeline to be a section 25 pipeline,  
9 it must be for the transportation or transmission of gas,  
10 and it must be designated by the owner as a transmission  
11 pipeline.

12 How is a pipeline designated by the owner as a  
13 transmission pipeline, something which is a mandatory and  
14 necessary pre-condition and an essential ingredient to  
15 finding that a pipeline or any kind of pipeline is a  
16 section 25 pipeline.

17 The only part of the act that in any way speaks to how  
18 it might be so designated happens to be -- perhaps not  
19 surprisingly -- the very next section. And even MPAC  
20 agrees that a designation occurs under subsection 2.

21 So let's look at what subsection 25 (2) says. And I  
22 will pause at various points for emphasis.

23 "On or before March 1st of every year or such other  
24 date as the Minister may prescribe".

25 And there is no prescription here, so we're left with  
26 the words "on or before March 1st of every year... the pipe  
27 line company", which is defined above as a company that  
28 owns or operates a pipeline, not one that formerly did,

1 "the pipe line company shall notify the assessment  
2 corporation of the age, length and diameter of all of its  
3 transmission pipe lines located on January 1 of that year  
4 in each municipality and in non-municipal territory."

5 So I pause to make the following observations.  
6 Section 2 provides that notice must be given every year  
7 that it is mandatory that a pipeline company shall notify  
8 MPAC of these various elements, age, length, diameter of  
9 its transmission pipelines.

10 And I will pause there to say that MPAC in its  
11 submissions in fact proposes to add some statutory  
12 language, or to imply to some statutory or infer some  
13 statutory language that actually isn't there. MPAC  
14 suggests that a designation first occurs the very first  
15 time that a pipeline company notifies of a transmission  
16 pipeline and then not again, that subsequent reportings are  
17 just for reporting purposes.

18 But if you look at subsection 25 (2), there is nothing  
19 whatsoever in the act that says anything like that. What  
20 25 (2) in fact says is what I have just read to you, that  
21 every year the pipeline company mandatorially shall notify  
22 of its transmission pipelines -- again, emphasis on the  
23 words "transmission pipelines".

24 Finally, section subsection 3 may bear some relevance.  
25 It provides that "all disputes as to whether or not a gas  
26 transmission pipeline -- sorry, a gas pipe line is a  
27 transmission pipe line shall, on the application of any  
28 interested party, be decided by the Ontario Energy Board

1 and its decision is final."

2 And I make a few observations about that. First, in  
3 each of subsections 1, and in particular 2 and 3, the  
4 reference is to "a transmission pipe line." In 1, it is  
5 "designated by the owner as a transmission pipe line." In  
6 2, notice of the transmission pipeline, and 3, a dispute  
7 about whether a pipeline is a transmission pipeline. So it  
8 always comes back to that definition of "transmission pipe  
9 line".

10 Second, in respect of subsection 3, it is not normally  
11 the province of the Ontario Energy Board to get involved in  
12 municipal assessment issues. But in this case, the  
13 Legislature specifically designated and delegated to the  
14 OEB, because of its specialized expertise, the role of  
15 determining whether a gas pipeline is a transmission  
16 pipeline. And that suggests that this isn't merely a  
17 statutory interpretive exercise in a narrow sense because a  
18 court or another body -- such as an assessment board --  
19 could also carry out a statutory interpretive exercise.  
20 Here, this was delegated specifically to this Board with  
21 its expertise.

22 So with that review, let me turn to a few additional  
23 propositions.

24 The first is the proposition that the respondents put  
25 that, in effect, the OEB has no choice but to classify  
26 gathering pipelines as section 25 pipelines. But I submit  
27 that that's not the case, because if there is another  
28 reasonable interpretive option, you should prefer that

1 option to one that needs to sort of absurd value assessment  
2 result that we're left with here, where it is beyond any  
3 doubt that the result is exponentially higher than any  
4 actual value.

5 See section 25 does not in fact force you to classify  
6 a gathering pipeline as a quote "pipeline" as within  
7 section 25.

8 And as I noted, section 25 refers to "transmission  
9 pipe lines", a well-understood term in the industry and  
10 under the CSA, and the pipelines in question are gathering  
11 pipelines and it would be entirely appropriate for this  
12 Board to have regard to that concept, both based on the  
13 industry evidence and based on the CSA, which has  
14 legislatively adopted and determine that gathering lines do  
15 not have the purpose of transmitting gas, but rather are  
16 intended to gather and lead gas to a processing point.  
17 That was the position that the OEB Staff took in the  
18 Tribute matter.

19 Second, the act obviously contemplates that not every  
20 pipeline in Ontario is a section 25 pipeline. If it were,  
21 there would be no need for subsection (3), which asks the  
22 question whether a particular gas pipeline is or is not a  
23 transmission pipeline. If every pipeline in Ontario in use  
24 was a transmission pipeline, there would be no need for  
25 subsection (3).

26 And third, and perhaps most importantly -- but all of  
27 these points are important -- is the concept of  
28 designation. The pipelines in question must be designated.

1 There is no dispute that the current owner nor the  
2 immediate past owner made any such designation. And in  
3 fact, there is no evidence of any kind that anyone made  
4 such a designation in respect of these particular  
5 pipelines.

6 So for those reasons, the Board is not compelled to  
7 come to the conclusion that any pipeline and, more  
8 importantly, that these gathering pipelines must be  
9 assessed, must be treated as section 25 pipelines.

10 If they're not section 25 pipelines, they are assessed  
11 differently. They're assessed as fixtures on the land, and  
12 I note in that regard that the great majority of these  
13 pipelines in question are located offshore. They're  
14 located under and in conjunction with Lake Erie. So this  
15 notion of thousands of owners in respect of offshore  
16 pipelines isn't actually accurate.

17 My friends say, well, all of this evidence of value  
18 and industry and all of that, it is irrelevant, because the  
19 only question is one of statutory interpretation.  
20 Interpret the words and move on. But as I've said, that  
21 falls shorts of the mark.

22 And in particular, it falls short of recognizing this  
23 Board's statutory mandate, which has multiple parts, but an  
24 important part of which is to ensure the viability of the  
25 gas industry in Ontario, and another important part is to  
26 ensure that gas prices for consumers in Ontario are kept at  
27 an acceptable level.

28 My friends also point to the regulations under the act



1 and suggest that you should use those to interpret the  
2 statute, but that, in fact, has it backwards. The statute  
3 came first. The regulations came much later and were  
4 approved by Cabinet, not by the Legislature. And those  
5 subsequent regulations cannot be used to interpret any  
6 language of the statute in this case.

7 And I will remind the Board, as has been noted in our  
8 written submissions, that where there is true ambiguity as  
9 to the interpretation of provisions in a taxing statute --  
10 as this is -- the taxpayer gets the benefit of the doubt.

11 Finally, my friends say that this is the same issue  
12 that was decided in the Tribute case and therefore we  
13 should all pack up and go home. There is no further  
14 analysis that need be done.

15 And I am mindful of my time, Madam Chair, and I am  
16 coming up to the conclusion in about two minutes.

17 MS. FRANK: That's fine.

18 MR. SWAN: So in terms of the Tribute decision, I  
19 would say this. First, tribunals such as this Board are  
20 not bound by their prior decisions. There is no stare  
21 decisis that applies in tribunals, and tribunals -- it is  
22 open to tribunals and boards to decide cases based on the  
23 evidence and the circumstances and the relevant  
24 considerations that they may take into account as the  
25 matter is before them at that time.

26 And even if there is a conflict with a prior decision,  
27 it is open to the Board to do that, and I would just note  
28 that in the Edmonton East and Capilano Shopping Centres

1 case, referred to in our material, the Supreme Court of  
2 Canada recognized that assessment boards in Alberta  
3 assessing properties on opposite sides of the same street  
4 might come to opposite conclusions, and from their  
5 perspective that was an acceptable outcome.

6 Second, in terms of Tribute, the evidence in this case  
7 is materially different than what was before the Board in  
8 Tribute. It is not the same evidence.

9 You have the specific evidence of value in this case  
10 as a result of the court-supervised auction in Dundee and  
11 you have the evidence of the great disparity of value  
12 between actual value and assessed value, some 50 times  
13 greater. That was not before the Board in Tribute.

14 Second, you have evidence from an expert witness who  
15 clearly distinguishes from an industry perspective, but  
16 also from a valuation perspective, the difference between  
17 gathering lines and transmission lines, and notes that  
18 gathering lines have a limited lifespan that is entirely  
19 determined by the remaining reserves and the well in which  
20 the gathering line serves. Transmission lines can last  
21 virtually indefinitely, and indeed there are transmission  
22 pipelines in Canada that have been around now for 65 or  
23 more years.

24 Third, the Board in Tribute approached the question of  
25 designation in a way that, in my view, is not consistent  
26 with how the act and in particular subsections 1 and 2 of  
27 the act can be and should be interpreted, but moreover, in  
28 this case, there is evidence that neither the current or

1 prior owner ever made a designation, and there is also no  
2 evidence whatsoever, going back both to the more recent and  
3 the older lines, of any designation ever made by such an  
4 owner.

5 The final point I will make is this. In my submission  
6 and the submission of Lagasco, the Board either by its  
7 order or through its reasons must also send a message --  
8 whether to the Legislature or elsewhere -- that attempting  
9 to classify gathering pipelines as section 25 pipelines  
10 would imperil the entire oil and gas industry in Ontario,  
11 which is facing multiple insolvencies, will waste valuable  
12 gas resources in this province if wells aren't developed  
13 because the whole process is uneconomic. It will lead to  
14 abandoned gas assets, which was one of the concerns in the  
15 Redwater case, and also arising therefrom, it risks  
16 environmental harm to the province and to the assets, the  
17 natural assets of this province.

18 So Madam Chair and members of the Board, those were  
19 all of my submissions within the 20 minutes that were  
20 allotted to me, and I and my colleague, Mr. Bortolin, now  
21 stand ready, if the Board members have some questions for  
22 us.

23 MS. FRANK: Thank you, Mr. Swan. I believe that Mr.  
24 Janigan is going to start with questions. Mr. Janigan,  
25 please.

26 MR. JANIGAN: Yes, thank you very much, Mr. Swan.

27 I know you have referred to the regulation, the O.Reg.  
28 282.98, as not being particularly helpful in this case, but

1 before I deal with that, I just wanted to address a point  
2 that you made initially, that both you and Lagasco agree  
3 that these are gathering pipelines.

4 I note on page 5 of the argument from MPAC -- and  
5 paragraph number 9, if you have that in front of you.

6 MR. SWAN: Yes.

7 MR. JANIGAN: That MPAC indicates that Lagasco's  
8 pipelines consist of 7,379,540.5 feet that have been  
9 assessed under the table -- that's in part 10 -- as  
10 offshore pipelines.

11 320,193.19 feet have been assessed under table 2 as  
12 plastic gathering pipelines.

13 And part C, that 290,596.94 have been assessed under  
14 table 3 as "other pipe lines", all part of part 10 of the  
15 act that sets out the schedules.

16 Is this -- this current assessment or this current  
17 classification of Lagasco's pipelines looks to be different  
18 than simply a classification that they're all gathering  
19 pipelines. Can you explain that?

20 MR. SWAN: Yes. I did not -- perhaps I either  
21 misspoke or misunderstood. I didn't mean to suggest that  
22 all of the pipelines owned by Lagasco were classified as  
23 table 2 gathering pipe lines. Quite to the contrary. It  
24 is Lagasco's position that they are all gathering pipelines  
25 in an industry and CSA sense, that none of them are  
26 transmission pipelines, and none of them should be caught  
27 by section 25 of the act at all.

28 MR. JANIGAN: Okay.

1           MR. SWAN: And what you have here is the  
2   classification that MPAC has put on them, largely  
3   indicative of where they are located. And the great  
4   majority of them, as I noted, more than 90 percent of them  
5   are located offshore, and that's why they've been  
6   classified as offshore.

7           But in order to get to this three-part classification,  
8   one must first come to the conclusion under the statute,  
9   before you even get into the regulations, that they are  
10  section 25 pipelines, and it is Lagasco's position that  
11  none of the pipelines in question are section 25 pipe lines  
12  because, as gathering pipe lines -- from an industry and  
13  CSA perspective -- they don't qualify as section 25  
14  pipelines.

15          MR. JANIGAN: Okay. And my understanding is all A, B,  
16  and C of paragraph 9 are all classified by or sought to be  
17  classified by Lagasco as gathering pipelines, and thus not  
18  subject to the definition of pipe line under 25(1). Is  
19  that correct?

20          MR. SWAN: That's correct.

21          MR. JANIGAN: Okay. And currently that assessment,  
22  the way they're assessed under tables 1, 2 and 3 of part  
23  10, if we turn up regulation 282.98, which you probably  
24  have before you as well --

25          MR. SWAN: I do.

26          MR. JANIGAN: At paragraph 41, these give the assessed  
27  values for specified years for those tables that were  
28  referenced earlier in the material from MPAC.

1           And with respect to the fact that gathering pipelines  
2   appear as part of the way in which assessed values are made  
3   under the act, your point is that, in essence, gathering  
4   pipelines should not be included under this reg as being  
5   assessed in the fashion they are. Is that essentially it?

6           MR. SWAN: The way that I would suggest the analysis  
7   would flow would be that in order to get into the  
8   regulation, you have to walk through the door of section 25  
9   of the act, because the regulation is merely a subordinate  
10  rule-making authority under the act.

11           And only pipelines that are section 25 pipelines, that  
12  are those that fit within the definition and have been  
13  designated as transmission pipelines, only those pipelines  
14  get through the door of section 25 and into the regulation.  
15  And the regulation cannot change or alter the scope of the  
16  act.

17           The act is the legislative authority and only those  
18  pipelines that qualify as section 25 pipelines may be  
19  assessed in this manner using this linear assessment model.

20           And any language in the regulation cannot be used to,  
21  in any way, alter the statutory definition because the  
22  regulation is a mere subordinate regulation-making rule.

23           MR. JANIGAN: So in essence, this regulation, and in  
24  particular table 2 of part 10, should never apply to  
25  gathering pipelines?

26           MR. SWAN: Well, they should never apply to gathering  
27  pipelines unless those gathering pipelines meet the  
28  definition of a transmission line under section 25, which

1 is one that is for the transportation or transmission of  
2 gas and one which has been so designated for that purpose.

3 MR. JANIGAN: Is there any way a gathering pipeline  
4 could meet that definition?

5 MR. SWAN: I'm not sure that I could answer that  
6 question. If there was something that a particular  
7 pipeline company classified itself as a gathering pipeline,  
8 but which in fact was used for the transmission of gas --  
9 which clearly functioned in a way that was much beyond  
10 simply gathering -- and which had been designated by the  
11 owner as a transmission pipeline, then in theory it could  
12 step through the section 25 door.

13 But that is not the case in respect of any of the  
14 pipelines in question here. And there is no real dispute  
15 factually that these are gathering pipelines within the  
16 industry meaning and within the CSA meaning. And you will  
17 have seen from our material that the CSA -- which is  
18 adopted under the Technical Standards and Safety act --  
19 specifically distinguishes between gathering pipelines and  
20 transmission pipelines. And it is clear from that  
21 definition that gathering pipelines are quite distinct and  
22 match the description of the pipelines in question in this  
23 case.

24 MR. JANIGAN: Okay. Now, assuming that Lagasco's  
25 application succeeds and these pipelines are not found to  
26 be pipelines within the meaning of section 25(1), what  
27 happens and how are they assessed?

28 Are they assessed as MPAC has indicated, as commercial

1 property and using the current value method?

2 MR. SWAN: My understanding is that if they are not  
3 assessed in this linear method, they would be assessed on  
4 the current value method or the market value method, and  
5 would run with the land.

6 And I note as well, as is clear from the material,  
7 that the great majority of these are offshore pipelines.  
8 So the concept of thousands and thousands of landowners and  
9 so on, there is actually no evidence of that, because the  
10 evidence is that the great majority of these are offshore  
11 pipelines.

12 MR. JANIGAN: Where does the bill go for offshore  
13 pipelines?

14 MR. SWAN: Perhaps we could ask MPAC that question.  
15 You are getting into an area that is a bit beyond my level  
16 of expertise. But as I understand it, the question then  
17 becomes whether they run over Crown land or not and how  
18 Crown land is treated in terms of an assessment.

19 But if it is not Crown land, it would be dealt with  
20 and run with the ownership of the land, and they would be  
21 assessed as any other assets that is affixed to the land  
22 and becomes a fixture.

23 It is not that they would not ever be assessed in any  
24 manner. They would simply not be assessed as a -- using  
25 this linear method which, as we see, produces results which  
26 are putting oil and gas companies out of business.

27 MR. JANIGAN: And how would that assessment find its  
28 way to Lagasco, in terms of the monetary burden?



1           MR. SWAN: Well, to the extent that Lagasco has  
2 entered into agreements with landowners, or the Crown or  
3 otherwise, this would become an issue to be negotiated  
4 between them as to the burden sharing as between them,  
5 because there are leases or other agreements in place that  
6 Lagasco has where pipelines run over land.

7           So that is a matter to be worked out between the  
8 landowner and Lagasco.

9           MR. JANIGAN: Are you suggesting that there may be  
10 circumstances where Lagasco would not be responsible for  
11 these assessments?

12          MR. SWAN: It is possible. But what I am suggesting  
13 as well is that Lagasco enters into agreements with those  
14 landowners over whose land these pipelines run, and that  
15 then becomes a matter to be worked out, and no doubt  
16 landowners would not themselves seek to bear the burden of  
17 pipelines without being compensated for it.

18          MR. JANIGAN: With respect to the point involving the  
19 second criteria for a finding that a gas line is a  
20 pipeline, indeed the designation requirement, I believe you  
21 are suggesting, number one, is that a designation in order  
22 to be effective has to be the designation from the current  
23 owner.

24          And secondly, I don't know if you have touched upon it  
25 or it was implicit that in fact there is a right of  
26 revocation, as it were, by that owner of that designation.  
27 Is that a position of Lagasco?

28          MR. SWAN: If I might address just one other point

1 from your last question before I address that one, Mr.  
2 Janigan.

3 MR. JANIGAN: Sure.

4 MR. SWAN: Which is I am told by my client that the  
5 leases in place with landowners in fact expressly provide  
6 that Lagasco will be responsible for all taxes.

7 So that that matter may in fact be dealt with already  
8 under lease agreements that are in place, if the pipeline  
9 owner, Lagasco, is obliged to cover all taxes, which is the  
10 industry standard on leases.

11 MR. JANIGAN: Okay.

12 MR. SWAN: So to come back to your subsequent  
13 question, my answer is this. Yes, it would appear that the  
14 statute requires that the landowner, in the very least the  
15 current landowner must designate a pipeline as a  
16 transmission pipeline, whether it does that once and is  
17 bound by that definition as the owner and the current  
18 owner, or whether it must do so annually.

19 It would appear on the statute that it must do so  
20 annually, but it also is important to note that 25(2)  
21 obliges, statutorily obliges, the pipeline company to  
22 designate pipelines that are section 25 -- or to identify  
23 pipelines that are section 25 transmission pipelines.

24 So that if a pipeline owner owns a transmission  
25 pipeline that is inarguably a transmission pipeline, it is  
26 obliged, under section 25(2), to so identify.

27 MR. JANIGAN: Is that an obligation? Or is that  
28 something that is discretionary?

1           MR. SWAN: Well, that's something that may be open to  
2 interpretation. And I don't know that I have a definitive  
3 answer on that point. But what I can say is that the  
4 language of the act is that the pipeline company shall  
5 notify the assessment corporation.

6           So there is an obligation to notify. And if the  
7 pipeline company notifies the assessment corporation that  
8 it has a transmission pipeline on its -- that it owns, then  
9 in effect it has so designated it on an annual basis.

10          I will say, I think I am obliged to, but Lagasco is  
11 not in the ordinary sense of the term a pipeline company.  
12 It is a producer, although the definition of pipeline  
13 company in the statute applies to anyone who owns or  
14 operates a pipeline. But the important point in response  
15 to your question is, there is an obligation to notify of  
16 the existence of transmission pipelines.

17          MR. JANIGAN: Where is that found, Mr. Swan?

18          MR. SWAN: Well, it is found in section 25(2): "The  
19 pipe line company shall notify the assessment corporation"  
20 of various details "of all of its transmission pipe lines".

21          So in so describing those details of its transmission  
22 pipelines, it is effectively designating them in each year.

23          MR. JANIGAN: Well, obviously there has to be a  
24 designation before you are obliged to report, wouldn't  
25 there be?

26          MR. SWAN: Well, there would have to be a designation  
27 in the first year you are obliged to report. In fact, the  
28 statute doesn't refer to how the designation should take

1 place. That's why I earlier said that one interpretation  
2 -- which appears to be reasonable -- is that wherever a  
3 pipeline company owns a transmission pipeline, it is  
4 obliged to notify the assessment corporation of it and in  
5 so doing is designating it. The first year in which it  
6 gives that notification will be the first year in which it  
7 so designates, if that answers your question.

8 MR. JANIGAN: Okay. Just a final question, I believe.  
9 What has happened to your appeal to the Assessment Review  
10 Board?

11 MR. SWAN: My understanding is that that is on hold  
12 pending the outcome of this proceeding, the ultimate  
13 determination of this proceeding before the OEB.

14 MR. JANIGAN: Okay. I believe that is all of my  
15 questions. Thanks very much.

16 MR. SWAN: Thank you.

17 MS. FRANK: Thank you, Mr. Janigan.

18 Mr. Dodds, do you have any questions? Mr. Dodds, do  
19 you have any questions? Mr. Dodds, you are on mute.

20 MR. DODDS: Just one question, Mr. Swan, is that you  
21 say no designation, yet Dundee has continued to operate  
22 under that premise of no designation. Is that true? Like,  
23 it's been operating under no designation?

24 MR. SWAN: So I can't speak to what occurred before  
25 Dundee, but I do know that Dundee, for example, appealed  
26 these assessments and challenged them.

27 I do know that there is no evidence whatsoever that  
28 Dundee has ever designated these pipelines. And of course,

1 the evidence is clear that Lagasco has never designated  
2 these pipelines.

3 So the pipelines or the gathering lines, but they are  
4 a form of pipeline, but not a section 25 pipeline, the  
5 gathering lines have been used and operated by Lagasco and  
6 before them Dundee, but they have never designated them,  
7 and as I said at the outset, there is actually no evidence  
8 whatsoever of any designation having been made.

9 MR. DODDS: Okay, thank you. That is all of my  
10 questions.

11 MS. FRANK: Thank you, Mr. Dodds.

12 I just have one question, Mr. Swan. I am wondering,  
13 if the decision was that indeed the value should be  
14 assigned to the property, how would that value be  
15 distributed among the various properties that the pipelines  
16 cover?

17 MR. SWAN: Well, I would venture to say -- and I guess  
18 we should ask MPAC this question as well, but I would  
19 venture to say that it would then be for MPAC to attribute  
20 that portion of the value of each gathering line that runs  
21 over each particular piece of land as MPAC assesses any  
22 other structure or fixture on a piece of land, attribute  
23 the value of the pipeline to that land.

24 And as I noted a few moments ago, the leases that are  
25 in place with the landowners provide that Lagasco is  
26 responsible for any taxes that may accrue as a result of  
27 that. So ultimately Lagasco would be responsible for that  
28 portion of the pipeline on the piece of land that was

1 assessed using the market value assessment approach.

2 MS. FRANK: Mr. Swan, you have no suggestions as to  
3 how you would attribute that market value to the various  
4 properties. I mentioned the distance that is covered on  
5 various properties, including the offshore, vary quite  
6 considerably. So you wouldn't just divide by the number of  
7 properties. There has got to be some approach. You have  
8 no thoughts on that?

9 MR. SWAN: Well, I think that is fair. Just as  
10 different houses and structures on each piece of property  
11 in the province are valued and assessed differently,  
12 different gathering lines or other gas-related structures  
13 on each property would be assessed according to their  
14 market value.

15 And if a particular pipeline on one piece of property  
16 is seven times longer than a piece of pipeline or gathering  
17 line on a neighbouring property, it would not surprise me  
18 to learn that MPAC used the market value assessment and  
19 came up with a different number for them.

20 But in each case, according to the leases, Lagasco  
21 would be responsible for paying for it, but at a market  
22 value rate, not at this linear number that I have addressed  
23 at some length in terms of its suitability.

24 MS. FRANK: Okay, that's fine, Mr. Lagasco. Thank you  
25 for your comments and your presentation.

26 I think it is time we will turn to MPAC and Ms. Lunau,  
27 could you please start with your presentation.

28 SUBMISSIONS BY MS. LUNAU:

1 MS. LUNAU: Yes. Good morning, Madam Chair. In my  
2 submissions, in my 20 minutes, I am going to try to cover  
3 three things.

4 One is Lagasco's argument that the Board should be  
5 applying technical definitions of pipelines.

6 Secondly, a brief description -- because I am  
7 cognizant of the fact that the Board has reviewed the  
8 submissions that have been filed as to why Lagasco's  
9 position defeats the purpose and the scheme of the  
10 legislation, which is important.

11 And thirdly, I want to deal with the designation issue  
12 and two issues under that. One is how the designation  
13 process worked prior to the owner designating, and  
14 secondly, this concept of an annual designation versus a  
15 one-time designation.

16 And I will give you references to the evidence or the  
17 materials as I go through my submissions, to assist.

18 With respect to the first issue, as I understand  
19 Lagasco's argument, they're taking the position that in  
20 order to be assessed under section 25, section 25 has to  
21 use the technical terminology that is used in the industry.  
22 And because "gathering pipeline" is a technical term and  
23 the word "gathering pipeline" is not in section 25,  
24 therefore, they are not to be assessed under section 25.

25 And this was an issue -- and I am going to leave the  
26 Tribute decision to Mr. Tunley to deal with, but this is  
27 the exact same issue that was dealt with on the Tribute  
28 decision. And I think the proof that this is not in fact

1 what was intended by the Legislature that these technical  
2 rules be applied, is evidenced in the material that we  
3 have, particularly from Ms. Lowry, and I am going to give  
4 you the reference: Ms. Lowry's affidavit, Exhibit C, PDF  
5 page number 16. There is no paper pagination on it.

6 In her affidavit, she refers to distribution  
7 pipelines, gathering pipelines, service pipelines,  
8 transmission pipelines, and offshore pipelines. And that  
9 does not include -- those are the lines.

10 That does not include the list of pipelines which are  
11 more extensive than that.

12 And then in Mr. Koller's affidavit, at Exhibit A, PDF  
13 page number 38, he refers to service -- sorry, feeder  
14 pipelines.

15 So according to the argument being put forward by  
16 Lagasco, only those lines that are called transmission  
17 lines are to be assessed under section 25, which doesn't  
18 make sense given the purpose of the legislation. And  
19 apparently transportation lines don't exist, because we  
20 have no definition of them.

21 So those are -- apparently the use of the word  
22 transportation in section 25 has no meaning. And that  
23 these technical definitions overwrite the plain and  
24 ordinary meaning of a pipeline for the transportation or  
25 transmission of gas.

26 So that would mean that distribution lines aren't  
27 assessed under section 25. Service lines aren't assessed  
28 under section 25. Offshore pipeline -- because they're



1 separately described, according to Ms. Lowry -- would not  
2 be assessed under section 25.

3 That does not make sense with respect to the purpose  
4 of having pipelines assessed using the linear approach.

5 Also, in the materials, Lagasco's factum, paragraph  
6 27, PDF page number 18, the definition of a pipeline under  
7 the Oil, Gas And Salt Resources act is included. And I  
8 note that pipeline under that legislation is a broad all-  
9 encompassing definition as well. So it includes pipeline  
10 for the collection of oil and gas, for the transportation  
11 of oil and gas and the distribution or transmission.

12 So again, that act is taking a broad definition of  
13 pipeline. The Assessment act has equally taken a broad  
14 definition, using a plain and ordinary definition of the  
15 meaning of "transmission" or "transportation."

16 Now, my friend in his submissions said if the  
17 definition of pipeline in section 25 was meant to include  
18 all pipelines, then there is no need really to define it.  
19 They could just say it includes all pipelines.

20 It is important to note that the act treats certain  
21 pipelines differently than others. So there is a separate  
22 provision in section 24 of the Assessment act that deals  
23 with certain pipelines that are valued on a current value  
24 basis, and in section 25 itself pipelines that are located  
25 in refineries, et cetera, are assessed using the current  
26 value methodology and not the section 25 provision.

27 So there are two different schemes within the act for  
28 the assessment of pipelines.

1           I want to deal with -- on this technical argument  
2 basis, I want to refer the Board to the Peace River  
3 decision that is included in my friend's book of  
4 authorities, Lagasco's book of authorities at tab 2.

5           In this, Lagasco says, well, here in BC, they've said  
6 that gathering pipelines are different than transmission  
7 pipelines, and I think it is important for the Board to  
8 recognize the difference in the purpose of the provision in  
9 the BC case.

10          Under the BC case, there wasn't a question as to  
11 whether or not gathering pipelines were to be assessed.

12          The question was whether the business of the assessed  
13 person was categorized as the business of the transmission  
14 of gas, or whether it was in the business of gathering the  
15 gas. And depending on the business, that was the  
16 classification.

17          And in that, I reference the Board to paragraph 12 in  
18 that decision, where it is clear it is dealing with what  
19 business, what is the predominant business. Not whether or  
20 not gathering pipelines are different than transmission  
21 pipelines from a "pipeline" from a factual perspective.

22          Also, in that case, I think it is interesting to note  
23 in paragraph 11, if we're talking technical terms, the  
24 court there makes the statement that in the industry -- so  
25 technically - "transmission" refers to the bulk movement of  
26 natural gas while "transportation" refers to the bulk  
27 movement of oil.

28          In section 25 of the Assessment act, however, it

1 refers to pipelines for the transportation or transmission  
2 of gas, which again supports MPAC's position that it is the  
3 plain and ordinary meaning of those words that applies, and  
4 not the technical meaning of the word.

5 In paragraph 38 of Lagasco's submissions, they seem to  
6 suggest -- and this was true of my friend's submissions  
7 this morning as well -- that the distinction they want to  
8 draw is that pipelines that have a fixed life based on the  
9 amount of gas in the well are to be treated differently  
10 than pipelines that have a longer life and normal  
11 transmission that have -- I think the word used was an  
12 indefinite life.

13 Again, I want to point out that that is not supported  
14 by section 25 of the Assessment act.

15 Under section 25 of the Assessment act, abandoned and  
16 pipelines that cease to be used have special treatment.

17 So section 8, 25 subsection 8, deals with pipelines  
18 that are abandoned, and section 25 (9) deals with pipelines  
19 that cease to be used. And there's a distinction between  
20 the two.

21 Again, not supporting this idea that the distinction  
22 that needs to be drawn, sort of the dancing on the head of  
23 the pin so that the gathering pipelines aren't pipelines is  
24 that they have a definite life.

25 In addition, it ignores -- the argument ignores the  
26 rate differential in the tables in the regulation. So I  
27 just looked at pipelines that are 1.25 inches to 1.5 inches  
28 -- and I will note as well that Mr. Koller in his report

1 makes it clear that transmission lines are bigger than  
2 this. So again, they're regulating not only types of  
3 pipeline that Lagasco says are not pipelines, but they're  
4 regulating sizes of pipelines that apparently they  
5 shouldn't be.

6 But looking at that rate, table 1, offshore pipelines  
7 are satisfied at 9.97 a foot. Table 2, plastic field  
8 gathering and distribution pipelines -- I apologize, I have  
9 a clock.

10 Table 2, plastic field gathering and distribution  
11 pivot points are assessed at 7.25 a foot. And other  
12 pipelines are assessed at 18.15.

13 So there is a significant rate differential based on  
14 the type of pipeline that is recognized in the rates  
15 regulated under the Assessment act.

16 So for those reasons, it is MPAC's position that the  
17 transportation and transmission have the ordinary meanings  
18 considered and not technical meaning.

19 I am moving on to my second point. Lagasco's argument  
20 defeats the scheme of the linear assessment under the  
21 Assessment act, which is important when we're interpreting  
22 the legislation. Again, it is covered quite extensively in  
23 the written argument and the written/oral submission.

24 There were two reasons why it defeats the scheme of  
25 the legislation. One is, as the questions from the Board  
26 have indicated earlier, it is extremely difficult to assess  
27 segments of pipe lines under the current value methodology.

28 And the second point that I think that is important to

1 note as well is that these pipe lines have been assessed,  
2 as we see from Mr. Ford's affidavit, going back to 1957.  
3 Lagasco has said it doesn't even know exactly where they  
4 are. So its best evidence is a map and MPAC's information.

5 So again, the purpose of a linear assessment as other  
6 unique valuation approaches under the Assessment act is to  
7 recognize the difficulty of assessing certain types of  
8 properties using the current value method.

9 So airports are assessed based on passenger counts.  
10 Hydroelectric plants are assessed based on their  
11 hydroelectric-generating capacities. Railways are assessed  
12 based on their -- the length of the rail. Pipelines are  
13 assessed based on the length of the pipeline, because it is  
14 virtually impossible to do it in any other methodology.

15 And it is very important, when we look at how the --  
16 what the Legislature must have intended when it enacted  
17 this provision, why it did it, and why it did it is the  
18 difficulty of assessing it using the current value  
19 provisions.

20 The third point I want to talk about is the  
21 designation, and as I said, there are two components of  
22 that. One is, were the pipelines designated? And that's  
23 subdivided in, were they designated by the owner or were  
24 they designated by someone before the owner had to  
25 designate? Then the second portion of it is, does the  
26 owner need to designate annually?

27 With respect to the original designation, MPAC would  
28 have no means of determining whether or not pipelines

1   existed unless they received some notification from someone  
2   that the pipelines existed.

3           The process that MPAC uses to assess pipelines is set  
4   out in Mr. Ford's affidavit, and again, it is important to  
5   recognize that under the scheme of the Assessment act, once  
6   an assessment is finally determined -- which means once the  
7   roll is closed -- that assessment roll and that assessment  
8   is deemed to be correct and binding, even if there are  
9   mistakes.

10          So the act specifically says, even if it is wrong, it  
11   is right. That's the scheme of the legislation. That's  
12   the certainty, transparency, and -- of the process under  
13   the Assessment Act for municipal revenues.

14          As noted by Lagasco in its reply submissions -- sorry,  
15   I am just getting to the right spot -- prior to property  
16   owners being required to designate their pipelines, the  
17   requirement to designate actually rested with this Board.

18          So the Ontario Energy Board designated pipelines as  
19   transportation or transmission pipelines for oil and gas.  
20   They also were responsible for the notification of -- to  
21   the assessing authority at the time. Just give me one sec.

22          So this is Lagasco's reply submissions, paragraph 8,  
23   PDF page 6. So in 1966 the Assessment Act was changed so  
24   that the person responsible for designating pipelines was  
25   changed from the Ontario Energy Board to the property  
26   owner.

27          So for any of the pipe lines in issue here that have  
28   dates, installation dates, in Mr. Ford's affidavit before

1 -- 1966 or earlier, those pipelines -- whatever they may  
2 be, the gathering pipelines, offshore pipelines, or other  
3 pipelines -- were actually designated by this Board as  
4 falling under section 25.

5 So that's further support for MPAC's position that  
6 these pipelines in issue actually are pipelines under  
7 section 25 of the Assessment Act.

8 Presumably, this Board used its expertise at the time  
9 to determine that they were, in fact, section 25 pipelines.

10 In his submissions my friend said, well, note that in  
11 section 25 it says that the word is, in the present tense,  
12 "is designated". And he suggested that that meant that it  
13 had to be designated, in the present.

14 It is MPAC's submission that "is designated" simply  
15 means once it is designated it is designated for all time.  
16 And again, I go back and remind the Board that abandoned  
17 and -- pipelines and pipelines that cease to be used  
18 continue to attract assessment under the Assessment Act  
19 under section 25.

20 So the second issue is whether or not the designation  
21 must occur annually. The requirement to designate is under  
22 the definition of "pipe line" in section 25(1). The  
23 requirement to notify is in section 25(2). They're in two  
24 completely separate sections. And they use two separate  
25 terms.

26 So if the Legislature intended that the designation  
27 take place annually, it would have included it in section  
28 25(2). It would have referred to designation instead of

1 notification. Or it would have said notification and  
2 designation. But it does not do that.

3 So the requirement that designation is a one-time  
4 designation as supported by the other provisions in section  
5 25 and in the Assessment Act, the notification obviously is  
6 an annual provision.

7 Lastly, from my review of the materials that have been  
8 submitted and from listening to my friend's submissions  
9 this morning, the real issue with respect to the pipelines  
10 is that there's a feeling by Lagasco and presumably the  
11 Ontario Petroleum Institute that the application of the  
12 regulated rates results in assessment and taxation that is  
13 too high.

14 This is not an issue that is within the jurisdiction  
15 of the Board. This is an issue that Lagasco and the  
16 Institute should be raising with the government. The  
17 government sets the rates, defines pipelines under the  
18 Assessment Act.

19 In MPAC's materials we have included the Yonge Street  
20 Hotel decision. That's at MPAC's authorities, tab 1.  
21 Paragraph 24 in that decision -- which is at PDF page 11 or  
22 page 18 of the paper copy of the decision -- that case was  
23 dealing with a hotel that had been substantially renovated.  
24 So it had been taken down to basically the metal studs and  
25 rebuilt.

26 And under the assessment legislation, the treatment of  
27 a renovated building was different than the treatment --  
28 and is different than the treatment of a newly-constructed



1 building.

2 One of the arguments put forward by the property owner  
3 was, that wasn't fair, that the treatment was so disparate  
4 that it resulted in an unfair or unjust treatment of their  
5 property.

6 And what the Court of Appeal said is, we can't ignore  
7 the law, and that, absent a constitutional infirmity, none  
8 of which is alleged here, the court cannot alleviate from  
9 any perceived unfairness in the application of the law.

10 So although we can have sympathy with the plight or  
11 with the concerns raised by the industry and by Lagasco,  
12 this Board must apply the law as it is written.

13 Those are MPAC's submissions.

14 MS. FRANK: Thank you, Ms. Lunau. I think Mr. Dodds  
15 is going to start on questioning.

16 MR. DODDS: Yes. Ms. Lunau, thank you very much for  
17 your presentation.

18 You make mention in a few places about the scheme of  
19 the legislation and to distinguish it between linear  
20 valuation and current valuation, and you say it should be a  
21 legislative solution.

22 Now, from time to time, there are amendments to the  
23 Assessment Act. Does the MPAC ever have any role or any  
24 input into amendments? Is there liaison between MPAC and a  
25 legislature, because quite often legislation will come down  
26 that sometimes may not be totally workable.

27 So does MPAC have any input to changes, amendments, or  
28 proposed changes and amendments to the legislation?

1 MS. LUNAU: MPAC reports through the Ministry of  
2 Finance and, yes, there is ongoing communication between  
3 MPAC and the provincial government.

4 Whether they are consulted on every proposal, I can't  
5 say that. But obviously there are -- as the assessing  
6 authority in the province, they are consulted I would  
7 assume on most.

8 MR. DODDS: But you would have a role? Like can you  
9 initiate amendments? If you find a regulation is not  
10 working very well in practice, because that does happen,  
11 would you be able to go through liaison with the minister  
12 and say, look, this is not working. It could be revised.  
13 It should be revised. Do you play any role in that way?

14 MS. LUNAU: MPAC can, does have obviously with its  
15 parent ministry does have an ongoing series of  
16 communications, and would raise with the ministry proposed  
17 changes or issues that are arising in the legislation.

18 Can they say to the government "please amend" and  
19 expect that to occur? No. Obviously that rests within the  
20 discretion of the Legislature.

21 MR. DODDS: No, I wasn't suggesting that. But you do  
22 have input? If you recognize that things aren't working,  
23 would that not be an obligation of MPAC? Like you have an  
24 obligation, do you not, between the stakeholders and the  
25 customers to ensure the legislation and the regulations are  
26 working as they should?

27 So would you not have a role to bring that up to the  
28 minister that perhaps this might be a case where it is not

1 working?

2 MS. LUNAU: They don't have a legal obligation to do  
3 it under the Municipal Property Assessment Corporation Act.  
4 Their obligation is just to administer the law as they've  
5 been given it.

6 But practically speaking, yes, MPAC does advise the  
7 minister if there are concerns with respect to provisions  
8 in the act.

9 MR. DODDS: Could that not be done in this case, if it  
10 looks like it is a problem? It seems to be around for  
11 quite some time. Why would MPAC not take the initiative to  
12 go to the minister and say, look, this is a problem.

13 MS. LUNAU: Again, there is no evidence of this. I  
14 suspect most of the parties that are before you today have  
15 raised this issue with the Legislature.

16 MR. DODDS: But once again, without the assistance of  
17 MPAC, is what you're saying, or without liaison with MPAC?

18 MS. LUNAU: Again, I can't speak to -- there are  
19 certain confidential discussions that go on between MPAC  
20 and the Ministry of Finance.

21 I don't believe that any of the industry players have  
22 asked MPAC to make a joint presentation to the Ministry of  
23 Finance. That does happen occasionally with certain types  
24 of properties.

25 Again, I am not in-house with MPAC, so I can't say for  
26 certain. But I don't believe they've been asked to jointly  
27 make a presentation.

28 MR. DODDS: But if they were asked, it could be

1 considered?

2 MS. LUNAU: MPAC wouldn't put a policy position  
3 forward. It would provide factual background to the  
4 Ministry of Finance.

5 It is not its role to advise the government on how  
6 assessment legislation should be written.

7 MR. DODDS: Okay. My follow up questions -- they will  
8 probably just reinforce what you are saying, I think. But,  
9 you know, Lagasco suggests if these gathering pipelines are  
10 classified and assessed as transmission pipelines, that it  
11 will not be economically viable and oil and gas companies  
12 will need to abandon them prematurely.

13 Like, there's no obligation in MPAC's mind that this  
14 is something that should be considered, or should consider  
15 any ways to alleviate this problem, or simply to apply the  
16 legislation as written is what you are saying?

17 MS. LUNAU: Well, MPAC has no jurisdiction to do  
18 anything other than apply the legislation as it is written.

19 I will point out that Tribute raised this exact same  
20 issue based on a sale price.

21 There is also Lagasco itself has a separate litigation  
22 that was -- we just received a decision on it out of the  
23 Superior Court, and TransCanada Pipeline also has  
24 litigation pending on the assessment.

25 So the government is aware of the litigation. I think  
26 the issue as to whether or not the rates that are being set  
27 are too high is one that needs to be addressed by the  
28 industry directly to the regulator.

1           MR. DODDS: But would MPAC have any role in that?  
2    Could it assist? Could it advise? Because, you know, with  
3    most of the Crown agencies that carry out the will of the  
4    government, there is liaison between the agency and the  
5    government with respect to how realistic are these  
6    policies, should they be changed, can they be changed.  
7    Does MPAC ever consider taking any such role?

8           MS. LUNAU: Again, MPAC can. But the question as to  
9    whether or not the regulated rates result in tax burdens  
10   that put the industry at risk is one that MPAC wouldn't  
11   have that knowledge.

12          All MPAC could tell the Ministry is that we're told by  
13   the industry this is what is occurring. That comes more  
14   appropriately, I think, from the industry itself to the  
15   government.

16          MR. DODDS: Yes, I agree. So what you're saying is  
17   that there is really nothing that MPAC can do with respect  
18   to these assessments, fair or unfair, whether or not it  
19   results in a cost to the taxpayers, environmental concerns  
20   that are raised by Lagasco and the industry as a whole, the  
21   view of MPAC is there is nothing MPAC can do one way or  
22   another?

23          MS. LUNAU: No. MPAC can't -- in the same way that  
24   this Board can't decide it is not going to apply the  
25   legislation because it doesn't like the result, MPAC has to  
26   apply the legislation.

27          I think you will hear from my friend Mr. Tunley that  
28   the municipalities have issues about the changes to the

1   assessment as well. It is not just the -- Lagasco may  
2   think that the tax burden is too high, the municipalities  
3   may think it is too low, which is what usually happens in  
4   an assessment appeal.

5           MR. DODDS: But you did mention about the scheme of  
6   the legislation.

7           So when you enforce the rules and the legislation,  
8   does that ever come into it? You mentioned the fact that  
9   in your opinion, or MPAC's opinion, it's not in the scheme  
10  of the legislation.

11          How clear is MPAC on what the scheme of the  
12  legislation is in this particular case?

13          MS. LUNAU: In this particular case, it is clear to  
14  MPAC that the scheme is to simplify the assessment of pipe  
15  lines like other properties that run across multiple pieces  
16  of property.

17          So the scheme is to remove it from the current value  
18  approach and place it into this linear approach.

19          The scheme of the act is something that -- the  
20  Assessment Act is quite old. It predates confederation.  
21  The courts have quite often opined as to the scheme and  
22  purpose of the Assessment Act. Mr. Tunley points out that  
23  the Assessment and Municipal Act are complete code. They  
24  are to provide for the municipality. They're to provide  
25  certainty. And to ratepayers, they provide an ability to  
26  challenge assessments.

27          But the ability to challenge assessments is considered  
28  strictly time limited. They're time limits in the act on

1    which you can challenge it.

2           So we do have judicial interpretation of the purpose  
3    of the legislation.

4           The purpose of section 25 is quite clear because of  
5    the complexity of the assessment, which is to take  
6    pipelines, those pipelines that cross multiple properties  
7    and multiple municipalities and to separate them out to  
8    assess them to the owner of the pipeline company instead of  
9    to the potentially thousands of owners over or under the  
10   land that they may cross.

11          It is clear it simplifies the process. That is the  
12   entire purpose of assessing them under section 25.

13          MR. DODDS: I can understand the rationale behind  
14   that. But once again, you mentioned thousands of  
15   properties. And I have heard from submissions today that  
16   in this particular case -- although you have to look at the  
17   industry in general -- most of those lines are under water.  
18   I heard a figure of 90 percent.

19          So it is not that much of a burden. Like once again,  
20   getting back to the scheme of the legislation, it was to  
21   simplify; I can understand that. But in this particular  
22   case, if you had to go to current value methods, would that  
23   be much more complicated? It wouldn't be that much more  
24   complicated because there are very few property owners.

25          There seems to be an interpretation here, and that is  
26   what I am getting at.

27          MS. LUNAU: Well, with respect to the offshore  
28   pipelines, it depends on who owns the water lot.

1           So some of the water lots are obviously owned by the  
2 Crown. Some of them are owned by conservation authorities,  
3 and some of them are owned by individuals. It depends on  
4 where they run.

5           So MPAC does assess water lot if they have been  
6 designated, and they do assess assets on Crown land.

7           MR. DODDS: Okay. So I guess in summary, I understand  
8 what your position is. But you're saying to summarize that  
9 you feel that MPAC does not have any obligation to bring  
10 this up to the minister through its liaison or to try to  
11 correct the situation, and once again I just would go back  
12 to it, most Crown agencies do have some sort of an  
13 obligation to work with the customers and stakeholders, and  
14 I was wondering, there doesn't seem to be any option for  
15 that in this particular case.

16          MS. LUNAU: Well, MPAC is an assessing authority.  
17 Remember, it is a taxing body, not a regulatory body. So  
18 it plays a slightly different role. And as I said, I don't  
19 think MPAC has any sort of legal obligation. I know it  
20 doesn't have a legal obligation to do it.

21          Whether or not it would raise the issue with the  
22 Ministry of Finance, the Ministry of Finance is aware of  
23 the litigation. And again, MPAC doesn't have the knowledge  
24 to tell Finance that this is causing any harm to the  
25 industry, because it isn't an oil and gas producer. It  
26 doesn't know that the rates are detrimental. That would be  
27 something that the industry definitely should be raising.

28          And as I said, I am not sure that the industry has



1 ever asked MPAC to coordinate a submission to whatever  
2 ministry -- MPAC's own ministry is finance, but whatever  
3 ministry with respect to the assessment.

4 Again, I am expecting that MPAC would say, well, the  
5 impact on the industry isn't something that it has any  
6 expertise or any ability to comment on.

7 MR. DODDS: Okay, thank you, those are all of my  
8 questions.

9 MS. FRANK: Thank you, Mr. Dodds.

10 Mr. Janigan, do you have any questions? Mr. Janigan,  
11 you have to unmute.

12 MR. JANIGAN: Okay. Thank you very much. Thank you,  
13 Ms. Lunau, for your presentation. I have some questions  
14 that -- I understand MPAC's position with respect to the,  
15 effectively the definition is complete within section 25(1)  
16 and we should not use outside sources to qualify the terms.

17 But 25(1) puzzles me as well, and that is what I  
18 wanted to raise with you.

19 I take it in that definition of "pipe line", it is a  
20 two-part affair, where you have -- there has to be a  
21 transportation or transmission of gas and there has to be a  
22 designation by the owner as a transmission pipeline and a  
23 pipeline for the transmission of -- or transmission of oil.

24 Both of those criteria, I assume, have to be present?

25 MS. LUNAU: Yes.

26 MR. JANIGAN: Okay. And with respect to the  
27 designation, I understand there is no record of  
28 designations made by the OEB, by Dundee -- I don't know if

1   there was a precursor to Dundee or not. I can't remember  
2   -- or Lagasco with respect to the transmission, designating  
3   gas lines as transmission pipe lines; is that correct?

4           MS. LUNAU: That's correct. And I suspect that the  
5   original -- like, some of these go back to the 1950s. It  
6   was probably somewhere none of us had ever heard of back in  
7   the day.

8           MR. JANIGAN: True. And one of the explanations, I  
9   think, of that that's been given by MPAC is that  
10  effectively after a designation is made and the assessment  
11  is complete, there will be no need to retain the  
12  designation material, because it would automatically assume  
13  it had been designated. Am I correct on that?

14          MS. LUNAU: Yes. Because once the designation has  
15  been used by MPAC to place an assessment on the assessment  
16  roll -- and an assessment roll is returned annually. So  
17  there is one for every single year. Once the assessment  
18  roll in that first year is finally determined, and that's a  
19  term under the Assessment Act, it is deemed to be correct  
20  and binding.

21          So once you've got the designation, no one has  
22  challenged the designation, there is no particular reason  
23  -- there's no ability to go back in MPAC's submission and  
24  rechallenge it, because the designation has now been final  
25  and has been determined.

26          Now, does that mean that MPAC should retain it?  
27  Perhaps it would make sense to do it. But again, remember,  
28  these are generations old.

1 MR. JANIGAN: And that would be also the case with  
2 respect to designations made by the OEB prior to 1966, is  
3 it?

4 MS. LUNAU: Yes. In 1966 the designation provision  
5 was changed. So the OEB would have made the designation  
6 and then would have notified the -- at that point it would  
7 have been a Municipal Assessing Authority -- of the  
8 pipelines.

9 MR. JANIGAN: Okay. And I take it we don't know  
10 whether or not -- if the same procedure applied and things  
11 continued on in terms of the assessment rolls, there was no  
12 effort to change the designation from one made by the OEB  
13 to one made by the owner?

14 MS. LUNAU: I can't -- again, I can't speak to that.  
15 That was in 1966. I suspect not, though.

16 MR. JANIGAN: Sure, okay. And the problem with that,  
17 of course, is that under 25(1) the pipeline has to be  
18 something that's designated by the owner. And presumably  
19 the OEB was not the owner of the pipeline.

20 MS. LUNAU: Yes. But the designation -- from 1967 and  
21 prior, the law at the time required the designation to be  
22 done by the OEB. So at the time that the designation was  
23 made, it was made by the appropriate individual.

24 MR. JANIGAN: Okay. But the -- the definition now,  
25 though, under the act seems to be that there has to be a  
26 designation by the owner, whether or not you take Lagasco's  
27 position that has to be the current owner or whether or not  
28 it could have been done in the past with respect to owners

1 of the pipe line.

2 In this case the OEB is neither. Wouldn't that be the  
3 case?

4 MS. LUNAU: That's true. But at the time that they  
5 were designated, the law held that the designator was the  
6 OEB. So once it is designated, that designation continues  
7 indefinitely.

8 MR. JANIGAN: Is there anything in the act that  
9 provides for that continuity?

10 MS. LUNAU: No. It would just be that at the time  
11 that the designation was made that was the law.

12 MR. JANIGAN: Okay. I am also puzzled by the fact  
13 that -- this double-barrelled criteria, that -- and we have  
14 the job of interpreting what a transmission pipe line is.

15 If the pipe line owner decides he doesn't want to  
16 designate the pipeline, there doesn't appear to be any  
17 obligation on the part of the owner to do so.

18 MS. LUNAU: No. And obviously if MPAC or a  
19 municipality was aware or anybody in fact was aware that  
20 there was a pipeline that qualifies under section 25 that  
21 wasn't designated, they could come to this Board and ask  
22 them to designate it as a pipeline.

23 MR. JANIGAN: However, the criteria for designating it  
24 as a pipeline is that it has been designated by the owner,  
25 and if he doesn't designate it, then how do you -- because  
26 you have the double-barrel criteria? Do you get what I  
27 mean? It's a bit of a --

28 MS. LUNAU: Yes. It is old legislation and it's old

1 law.

2 MR. JANIGAN: Okay.

3 MS. LUNAU: The notification provision as well, yeah,  
4 it is old. I think at one point in time the OEB designated  
5 and then notified, and they were two separate processes.  
6 But that two-barrelled process has existed for some  
7 considerable period of time in the legislation.

8 MR. JANIGAN: Okay. I just have one other question  
9 with respect to the difficulty of assessment. And it is  
10 covered in a number of submissions that it would be an  
11 owner's exercise to assess under the current value.

12 I take it that what the assessment would likely  
13 involve is using the current value of the pipeline and  
14 using a linear measurement to divide it up among the owners  
15 of the land of the property. Would that be the case?

16 MS. LUNAU: It would be difficult to do, because the  
17 -- if you were to take it out of section 25 and put it into  
18 the current value process, the land that is being assessed  
19 in each case is the parcel. And anything running over it  
20 or under it. And we've had this issue that -- the one  
21 instance I can think of is with respect to international  
22 bridges where only one-half of the bridge is in Canada and  
23 the other half is in a different country.

24 There's special rules about what do you do, because  
25 how much is a pipeline -- how much is a segment of a  
26 pipeline worth? And is that segment of the pipeline worth  
27 its percentage of the total? Or is it -- I can see where  
28 there would be an argument it is really worth nothing

1 because without the other bits of the pipeline, it is just  
2 a segment.

3 So I don't know. We haven't -- it hasn't come up. We  
4 haven't had to deal with it.

5 I would suspect that MPAC would use a cost approach to  
6 add it to the parcel, based on the number of feet. But  
7 again, it hasn't happened, so -- that's my surmise based on  
8 my knowledge of how MPAC would assess its properties.

9 MR. JANIGAN: Okay. Thank you very much. Those are  
10 all of my questions.

11 MS. LUNAU: Thank you.

12 MS. FRANK: Thank you, Mr. Janigan. I just have a  
13 couple of questions for you.

14 I want to explore what happens when a party says I  
15 object to the classification. I understand that Lagasco  
16 and formerly Dundee both objected to the classification.  
17 You talked about there is a period of time when you can  
18 object and after that it is too late.

19 But I want to know what happened to the objections?  
20 How were they handled?

21 MS. LUNAU: Well, the objections -- the only  
22 objections that I've been able to determine, and I think  
23 everybody has probably looked with this, there's some very,  
24 very old law from the 1970s where a couple of industry  
25 people applied under this provision, but Lagasco and  
26 Tribute are the only two instances where there's been a  
27 dispute over the designation.

28 And we know the result of Tribute and we're waiting to

1 find the result of Lagasco. So there has been no pipeline  
2 assessment litigation for decades.

3 MS. FRANK: But if it wasn't litigation, if it was  
4 just a request from the parties to MPAC, has that happened?  
5 And how does -- how has that worked?

6 MS. LUNAU: Oh, yes, sorry. In Mr. Ford's affidavit,  
7 he explains that the MPAC usually meets with the pipeline  
8 companies and they discuss additions to their pipelines.

9 And in addition, as I pointed out earlier, pipelines  
10 that are abandoned and that cease to be used, once MPAC is  
11 notified of that, those special assessment rules under  
12 section 25 apply to those portions of the property.

13 But so long as they're being used, if they qualify  
14 under section 25, they continue to be assessed.

15 MS. FRANK: So there is no ability -- am I  
16 understanding correctly, there is no ability to revoke the  
17 designation by the current owner, except in circumstances  
18 where they stopped the use of the pipeline? That is the  
19 only way that you can revoke the designation?

20 MS. LUNAU: Yes.

21 MS. FRANK: Okay, fine. Those are my questions. And  
22 thank you for your presentation and for your answering all  
23 of the questions. You have been most helpful.

24 I think at this time it is a little bit after eleven.  
25 11:05. We will take a 20-minute break and come back to  
26 deal with the other parties. We will just give the court  
27 reporter a few minutes of break. Thank you.

28 --- Recess taken at 11:05 a.m.

1 --- On resuming at 11:25 a.m.

2 MR. MILLAR: Okay, I see the Panel is in the process  
3 of rejoining us right now. So I will remind parties we are  
4 now back on the record and turn it over to Ms. Frank.

5 MS. FRANK: Okay, thank you.

6 Are there any matters that happened during break that  
7 we need to be aware of?

8 MR. MILLAR: Not that I'm aware of, Madam Chair.

9 MS. FRANK: Okay. So hearing none, I think it is over  
10 to you, Mr. Tunley. You have your presentation time.  
11 Thank you.

12 **SUBMISSIONS BY MR. TUNLEY:**

13 MR. TUNLEY: Thank you, Madam Chair. As I think the  
14 Panel knows, on issues that are properly before this Board  
15 there is considerable alignment between the position of the  
16 municipalities as the taxing authorities in this sphere and  
17 that of MPAC as the assessment authority.

18 However, I just do want to let you know, we have  
19 reserved the municipality's rights on issues that are not  
20 before this Board. One example of that that is referred to  
21 in the written material, is, if Lagasco were to succeed  
22 before this Board, the issue of how should these pipelines  
23 be assessed if not in accordance with section 25, but  
24 subject to that kind of reservation -- which I need to  
25 continue to make -- I am pleased to say the municipalities  
26 can adopt and not repeat the submissions from Ms. Lunau  
27 that you have heard today on behalf of MPAC.

28 So my oral submissions will simply emphasize four



1 points in our written argument, if I may.

2 First, obviously, the relationship of this case to the  
3 Tribute decision of the Board.

4 Secondly, the scope of this Board's jurisdiction.

5 Third, how the Board should assess this expert  
6 evidence brought forward by Lagasco from Mr. Koller.

7 And finally, the issue of the availability of remedies  
8 in other forums.

9 So if I may start, it is our submission that the  
10 issues raised before you by Lagasco in this case are  
11 indistinguishable from those decided by the Board in  
12 Tribute in 2016.

13 And I say that is so in two respects, particularly.  
14 First of all, the natural gas gathering lines that have  
15 been described by Lagasco in its evidence are in every  
16 respect the same in nature and function as those owned and  
17 described by Tribute.

18 Secondly, the evidence as to designation as a  
19 "transmission pipe line" for Assessment Act purposes, that  
20 evidence is also identical in this case to the evidence  
21 that was led in Tribute and that the Board found to be  
22 sufficient for it to determine that designation had indeed  
23 occurred.

24 So the fundamental position of the municipalities is  
25 that there is no reason to distinguish or depart from this  
26 Board's own very recent decision in Tribute on either of  
27 those two points.

28 Indeed, we make the submission that this Board's

1 decision was upheld by the Divisional Court on appeal. I  
2 think you have that decision in front of you. And that  
3 court specifically endorsed this Board's approach to the  
4 proper statutory interpretation of section 25 of the  
5 Assessment Act.

6 And we say that that court's decision is now the  
7 controlling legal authority. And in effect it may not be  
8 formally correct, but in our submission this Board should  
9 consider itself bound by the court's decision in Tribute.  
10 There is no reason not to do so.

11 And that brings me to my second point, that this  
12 Board's jurisdiction really is very narrow. The Board, I  
13 think, well understands that its role and jurisdiction  
14 under section 25 of the Assessment Act is narrow and  
15 limited. And specifically, in our submissions, we have  
16 drawn attention to the fact that the only disputes remitted  
17 to the Board are those described in subsection 25(3), and  
18 these are disputes about whether a given gas pipeline does,  
19 or does not, fall within the definition of "pipe line" in  
20 section 25(1).

21 We also have made it very clear in our written  
22 submissions that that issue, in our respectful submission,  
23 is primarily one of statutory interpretation.

24 Importantly, the Board has no role in deciding how any  
25 property should be assessed or in how they should be taxed.  
26 The Assessment Act and related legislation in Ontario on  
27 those subjects has been held to constitute a complete code;  
28 that is, for assessment and taxation of property.

1           Now, under that scheme, all aspects of assessment and  
2   taxation are specifically remitted to the expertise and  
3   jurisdiction of other statutory bodies. And those bodies  
4   in their respective spheres, in our submission, are  
5   entitled to the same deference as the Board itself enjoys  
6   within its allotted statutory spheres.

7           So when Lagasco says in its submissions to you today  
8   that certain matters are, quote, undisputed, I would  
9   caution the Board to have in mind that may simply reflect  
10  the parties' positions about what is or is not relevant and  
11  properly before this Board for its consideration in the  
12  limited jurisdiction that I have described.

13          And similarly, when the Board is drawn into questions  
14  about lease agreements and how taxes get enforced once  
15  they're imposed, again, none of that is before you.

16          We did not submit evidence on those issues, vital as  
17  they are to the interests of municipalities, not because  
18  they are not important issues, but because their resolution  
19  lies in another forum.

20          So in that regard, a case in point is the expert  
21  evidence, and I want to come to that specifically. Our  
22  position is that Lagasco's evidence, including the expert  
23  evidence to support its submission that the assessment and  
24  taxation of these facilities, is either, quote, excessive  
25  or, quote, uneconomic is irrelevant.

26          We didn't, quote, dispute that, not because we accept  
27  it or think it is inevitably correct. We don't even think  
28  it is complete. But that evidence is irrelevant to the

1 interpretive role of the Board, for a number of reasons,  
2 and I want to go through those.

3 First, we say any such impacts is the product of the  
4 legislation and decisions that have been put in place by  
5 other expert tribunals and authorities in the assessment  
6 system.

7 They are the ones -- not this Board -- who can  
8 directly change such impacts, if they exist, and this is  
9 not something that the Board should properly undertake to  
10 do indirectly or by a side wind as part of its role in the  
11 statutory interpretation of section 25. That is really not  
12 appropriate.

13 The reason -- the second reason that is not  
14 appropriate is that this Board's interpretation shouldn't  
15 be driven by the implications of one interpretation or  
16 another and what those might imply for impact on market or  
17 stakeholder interests.

18 If, based on a proper interpretation of the statute,  
19 there are these adverse implications for one or more of the  
20 stakeholders, the solution to that, in my submission, very  
21 clearly rests with the Legislature and not with this Board.

22 Finally, just in weighing Lagasco's submissions to you  
23 this morning and in writing on these points, the Board has  
24 to recognize that a decision in Lagasco's favour may entail  
25 equally, if not more, severe impacts on other stakeholders,  
26 including in terms of impacts on the municipalities and  
27 their tax revenues on the one hand, but also in terms of  
28 the owners of the real properties on which these pipelines

1 are situated.

2 Now, this Board simply is not in a position, does not  
3 have the evidence or the submissions from appropriate  
4 parties about how to weigh and appropriately balance those  
5 interests.

6 So that brings me to my last point, which is really:  
7 Are there available alternative remedies for Lagasco to  
8 raise these issues? And in our submission, yes, we say  
9 there are other better forums in which Lagasco should seek  
10 to address their concerns.

11 I think the first, as the panel is aware, at some  
12 point the ARB, the Assessment Review Board will proceed  
13 with appeals by Lagasco or its predecessor from certain of  
14 the determinations made by MPAC. That is one opportunity  
15 for address it has already availed itself of.

16 Second, I think as you heard this morning, Lagasco  
17 also availed itself of rights to apply to the Ontario  
18 Superior Court of Justice for exemptions provided under  
19 other sections of the Assessment Act. So that is available  
20 to Lagasco and has been exercised.

21 And I think finally, I was pleased to hear the Board's  
22 questioning on this and MPAC's answers. But clearly the  
23 Minister or Cabinet has the ability to set and change the  
24 assessment rules that have been established by the  
25 legislation or by regulations.

26 So Lagasco really has a political remedy in the  
27 political forum in which to seek exemptions from tax or  
28 other relief for which it advocates before this Board.

1           So really, for all of these reasons, we submit that  
2   the Board really should reaffirm and apply its own decision  
3   in Tribute and find that these pipe lines in issue fall  
4   within section 25 of the Assessment Act, at the moment, as  
5   the legislation stands. It should dismiss Lagasco's  
6   application to the extent that it seeks any other outcome.  
7   And it should at the same time have confidence that there  
8   are remedies in other forums for Lagasco to pursue its  
9   substantive concerns.

10           Those are my submissions formally, and I am going to  
11   ask that in answering questions, my colleague, Kathleen  
12   Poole, will join me just in case we stray too far into the  
13   assessment area.

14           MS. FRANK: Okay. That's fine. Thank you for your  
15   presentation, Mr. Tunley. I am going to start the  
16   questioning, and then my colleagues will carry on after.

17           I have only a couple of questions for you. First of  
18   all, as I am certain you've read, Lagasco and the OPI  
19   talked about the excessive taxation and what percentage it  
20   is. So they commented that in excess of 25 percent of the  
21   revenue in some cases, and actually 55 percent. This is  
22   the gross revenue from their operations that goes to  
23   taxation, which certainly is very significant. And the OPI  
24   says it is not sustainable.

25           So what I am wondering is, what is the municipality's  
26   reaction to this unsocial security stainable in terms of  
27   the taxpayers' comments level of tax? So if it's not going  
28   to carry on, what is your reaction?

1           MR. TUNLEY: Well, I think, you know, it is always a  
2 concern for a taxing authority to hear from taxpayers those  
3 kinds of claims. But I think that has to be raised in the  
4 appropriate forum.

5           The municipalities' role in this is to set the rate of  
6 tax, as you know, on an assessment that is provided to it  
7 by MPAC. It is a divided jurisdiction. And the rates that  
8 it applies are political decisions, that municipalities  
9 take individually.

10          So the tax will vary from municipality to  
11 municipality. The tax rate will vary.

12          MS. FRANK: So if you have flexibility on the tax rate  
13 and you know that the tax rate is potentially driving a  
14 business out of business, would that result in you  
15 modifying your tax rate? Would you say, no, we don't want  
16 to lose the entire amount of taxation by driving the  
17 business under, into bankruptcy. Would you change?

18          MR. TUNLEY: I think that that's an issue which, if it  
19 is going to come up at all -- I mean with great respect, I  
20 think that is an issue that will come up in another forum.

21          MS. FRANK: But answering my question in terms of what  
22 might you do, it will be helpful to -- you know, we also  
23 have an economic regulator. So it would give us comfort to  
24 know that you consider the economic impacts of your  
25 decisions.

26          MR. TUNLEY: Well, I am going to ask Ms. Poole to  
27 answer, because I know she has much more experience in  
28 dealing both with taxpayers and with municipalities when

1 these issues arise. So if I may, I will just defer to her  
2 answer on that.

3 MS. FRANK: Ms. Poole, I am just going to add an  
4 aspect, and then by all means I would like you to answer.

5 So not only kind of the hypothetical what would you  
6 do, but I know that there have been -- maybe in some of the  
7 municipalities, there has been bankruptcy that has  
8 resulted. I would like to know what the experience has  
9 been, in terms of the businesses that have ceased to  
10 operate, what have you found. If you could answer both  
11 questions.

12 MS. POOLE: Thank you very much. Just to provide  
13 Background, my name is Kathleen Poole with the law firm  
14 Nixon Poole Lackie.

15 Mr. Tunley has been taking the lead, but we have been  
16 involved because we specialize in assessments and municipal  
17 taxation; that is pretty up all we do. And we're in kind  
18 of a unique position here because -- Ms. Lunau is very  
19 familiar with us -- we primarily represent taxpayers. We  
20 only represent municipalities in very specific factual  
21 circumstances and unique special purpose types of  
22 properties.

23 And I will say part of the problem that we're having  
24 with this whole discussion is that a lot of the discussion  
25 about the economic consequences and the excessive taxation  
26 is all in a vacuum. It is based on one report by an  
27 economic analyst.

28 We haven't seen all of the financial statements. We



1 haven't analyzed them. We haven't looked to see what the  
2 current value regime would generate in contrast.

3 So it is a challenging question to ask in that respect  
4 and that is part of the reason we think the assessment  
5 review board or the courts or the Legislature is a better  
6 forum.

7 But that being said, there is dialogue I know between  
8 municipalities and taxpayers all the time with respect to,  
9 often in the resolution of assessment appeals, resolutions  
10 are done based on the needs of the taxpayers and the  
11 municipalities to make sure that businesses don't go  
12 bankrupt.

13 Part of our concern is that this isn't, in our view,  
14 the appropriate forum for that, because you are getting an  
15 incomplete picture and we're not even really -- we haven't  
16 delved into the pure assessment nuts and bolts because we  
17 don't believe this is the right forum for that.

18 I hope that answers your question. I am happy to  
19 answer any follow ups.

20 MS. FRANK: You are telling me that you haven't  
21 experienced bankruptcies in the pipeline business  
22 associated with wells? You haven't experienced that in  
23 your municipalities that you represent?

24 MS. POOLE: Honestly, I cannot speak to that. I will  
25 be candid because I am -- I am a lawyer representing a law  
26 firm.

27 The municipalities may be aware of that, but Mr.  
28 Tunley and I are not.

1 But as I said, if they exist, we would take them into  
2 consideration. Part of our concern is that none of this is  
3 in the record and for instance it is not in the record if  
4 Lagasco is paying their taxes, if they're not paying their  
5 taxes, what the lease agreements are. None of that is in  
6 the record.

7 And I could speak extensively to that, and put it to  
8 Lagasco, but that would seem to be unfair because we're  
9 again talking in vacuums.

10 MS. FRANK: What about the case with Tribute, which  
11 you're saying, you know, the municipalities say we need to  
12 uphold that decision. That decision seems to have resulted  
13 in a bankruptcy -- at least that is on the record. Are you  
14 disagreeing with that? What is your position on that?

15 MS. POOLE: Part of the problem, as I said, we're not  
16 disagreeing with it. We're getting an incomplete picture.

17 As an aside, if we knew it was going to go -- and I  
18 represent -- I understand the Board is in a very  
19 challenging position because you are asked to opine on a  
20 set of legislation, you are asked to opine on one little  
21 portion of a complete code.

22 But there was a decision in Catalyst Paper so you know  
23 by the Supreme Court of Canada and we can provide it, that  
24 said that -- it was out of British Columbia, it went up to  
25 the Supreme Court of Canada, where a bankruptcy -- a  
26 taxpayer contested the tax rate and said this is unfair  
27 because it is going to lead to bankruptcy, and the Supreme  
28 Court of Canada said it is still within the municipality's

1 discretion.

2 So I am not saying that that is what our  
3 municipalities intend and I am not speaking to that,  
4 because in fact they don't intend that and we do generally  
5 work with taxpayers, and I can say that also as a tax  
6 advocate. We don't often work with municipalities to try  
7 to find compromises and to resolve.

8 But as a legal matter, the municipality does have the  
9 right to tax in that manner.

10 MS. FRANK: There is one other potential impact that  
11 was raised in both the OPI and Lagasco's submissions, and  
12 that is that if there was a bankruptcy there would be a  
13 problem with who closes down the wells, potential serious  
14 environmental impacts.

15 My question is, since it is on the municipality's  
16 properties that they're managing overall -- not that they  
17 own, but that they're managing overall -- what would happen  
18 if indeed there were environmental impacts? Who pays?  
19 Remember, the company is bankrupt, so they're not paying.  
20 So who pays?

21 MS. POOLE: I am going to be honest. I don't know.  
22 Because it also depends factually on where -- that is again  
23 part of our concern, is a lot of this is very hypothetical.

24 It would depend on where the land is situated, what is  
25 on the land. For instance, if the land -- I know that many  
26 of these properties are under farms, for instance.

27 So I would suspect in many of those cases the  
28 landowner might be liable. But it will depend factually,

1 and as mentioned before, we have got a million square feet  
2 of pipeline, so there would be different factual answers  
3 depending on the circumstances.

4 MR. TUNLEY: Can I just add to that answer, because it  
5 is obviously also in evidence that most of the pipelines  
6 are under -- on provincial land.

7 So the province of Ontario has, by far, the largest  
8 stake in all of these issues, really. If there are such  
9 impacts and if this is more than just smoke being blown in  
10 this particular forum, I am pretty confident that Lagasco  
11 can raise those issues forcefully with the provincial  
12 government and with the various with the various  
13 environmental groups who look after and keep an eye out for  
14 environmental impacts on Lake Erie or frankly on any lakes  
15 in this province.

16 MS. FRANK: Do you say that the municipalities have  
17 any role in terms of raising this concern to the province?

18 MR. TUNLEY: I think what's been said already is, yes,  
19 of course they do. They have that role, and it begins in  
20 the assessment hearing process. It begins with an  
21 assessment of the facts, objectively. And it may well end  
22 up in a lobby to the provincial government to address the  
23 way the legislation is structured and how it impacts in  
24 particular areas.

25 MS. POOLE: Yes. And I wanted to add to that. If  
26 Lagasco were to do a submission to the province, ordinarily  
27 in our experience what happens is the taxpayer will meet  
28 with MPAC to determine whether MPAC will support that

1 submission or not and make a submission. But at that point  
2 the municipalities would also be involved in the dialogue.

3 And so it is a three-party kind of dialogue at that  
4 point, similar to the assessment appeal process, where  
5 again municipalities and MPAC are two separate statutory  
6 parties.

7 MS. FRANK: Okay, thank you. Those are my questions.

8 Mr. Dodds, do you have any further questions?

9 MR. DODDS: No further questions. Thank you.

10 MS. FRANK: Mr. Janigan, any questions?

11 MR. JANIGAN: Yes. Just a couple.

12 Mr. Tunley, you noted the avenue of appeal to the  
13 Assessment Review Board to attempt to deal with Lagasco's  
14 difficulties.

15 Looking at section 40(1), it appears that the powers  
16 of the Assessment Review Board are pretty limited, in terms  
17 of providing the kind of relief that Lagasco would be  
18 seeking. They certainly cannot amend the statutory  
19 provisions or the regulations or whatever to provide that.

20 So is it likely that that avenue would be of use to  
21 Lagasco?

22 MR. TUNLEY: I think Ms. Poole is better able to speak  
23 to that than I am, Mr. Janigan.

24 MS. POOLE: I will say, as you can -- unfortunately,  
25 it is in front of me, but I apologize, I have many, many  
26 documents open. But MPAC's submissions actually spoke to  
27 this point, where there is the ability of the Assessment  
28 Review Board to determine if the rates were properly

1 applied, for example.

2 I agree in all probability the scope is narrowed, but  
3 that being said, the appeals for the 2017 and subsequent  
4 taxation years haven't even been pled yet. They aren't due  
5 to be pled until March. They have been on hold until the  
6 resolution of the exemption application that was just  
7 decided two days ago. In fact, I am not sure the  
8 Assessment Review Board is even aware that this proceeding  
9 exists, the Ontario Energy Board proceeding.

10 So we don't actually know what issues Lagasco is going  
11 to raise and whether -- because my understanding -- and  
12 part of the problem again, this isn't really before the  
13 record here, but my understanding is there are parallel  
14 proceedings that have raised similar economic issues but  
15 haven't been resolved.

16 MR. JANIGAN: Okay. Just one last question, and it  
17 may be difficult to answer. In dealing with interpretation  
18 of statutes, there seems to be two avenues of approach.  
19 One is looking at the plain meaning of what the words say,  
20 and that is certainly what the Tribute decision, the path  
21 of that chose to take.

22 The other is that you also have to look at it from a  
23 contextual standpoint and avoid any absurd results.

24 I take it from your submissions that in fact you don't  
25 believe the record is clear enough to establish that there  
26 is a context that the interpretation just on the basis of  
27 similar interpretation, and one that existed for Tribute,  
28 would be upset by the fact that the context means that

1   there will be financial disaster.

2           MR. TUNLEY: Well, I think in that regard the  
3   situation you face as a panel of the Board in 2020 is no  
4   different than the position that was faced by the panel of  
5   the Board in 2016 when it decided Tribute.

6           So to that extent, my answer to your question would  
7   be, no, there is no reason for you to depart.

8           I would also remind you that the Divisional Court  
9   specifically endorsed this Board's decision to use the  
10   natural and ordinary meaning of the words of section 25.

11          So to now depart from that, after being told  
12   effectively by the Divisional Court that you are correct,  
13   would be somewhat surprising. But in my submission as  
14   well, I mean, part of what is playing out here -- and I  
15   think this is implicit in lots of things in the record  
16   before you -- but these pipelines have been around for a  
17   long time. Some of them are nearing the end of their  
18   useful productive life, and of course when you assess --  
19   when you agree at the outset of what no doubt in the '60s  
20   and earlier seemed like a viable project, the assessment  
21   process you choose may have made sense then. It may make  
22   less sense in -- towards the end of that process.

23          That is something that -- you can't fix these problems  
24   by interpreting legislation. You just can't. It's, in my  
25   submission, a fruitless exercise to be pursuing, to think  
26   you can fix those issues.

27          They are related to the state of the industry today.  
28   There is no evidence before you that the bankruptcies, if

1 there have been any, are caused solely or primarily by the  
2 taxation levels. That may be a contention of Lagasco. But  
3 it is subject to be proven, and it hasn't been proven, and  
4 you shouldn't act prematurely on what, in my submission, is  
5 alarmist evidence in the wrong forum.

6 MS. POOLE: And if I may just add one point. You  
7 referenced the record. There is nothing in the record to  
8 suggest what the appropriate current value assessment of  
9 these properties would be.

10 So it is tough to say that this is an absurd result,  
11 because we don't know what Lagasco's preferred assessment  
12 methodology would lead to. And the current value under the  
13 Assessment Act is a very specific defined term. Ms. Lunau  
14 and I spend our lives basically arguing about what it means  
15 in different contexts.

16 But with that not in the record, I submit it is  
17 challenging to say that the statute leads to absurd results  
18 when we don't even know what the other results would be,  
19 and there is nothing in the record to suggest that.

20 MR. JANIGAN: Okay, thank you very much. Those are  
21 all of my questions.

22 MS. FRANK: Okay, thank you, Mr. Tunley and Ms. Poole.  
23 I think we are ready to move on to submissions by Mr.  
24 McIntosh.

25 **SUBMISSIONS BY MR. MCINTOSH:**

26 MR. MCINTOSH: Thank you very much, Madam Chair. My  
27 name is Jim McIntosh. I am not a lawyer like most of the  
28 other folks on this call. I am a consulting engineer,



1 active in the province for 30-odd years. So I am speaking  
2 to you from a practical point of view, as a producer for  
3 oil and gas in the province.

4 The Ontario Petroleum Institute or the OPI represents  
5 upstream oil and natural gas producers in the province, the  
6 consultants and companies that work for them.

7 We don't, as a rule -- as an entity, we don't  
8 represent the refineries. We do have Union Gas and  
9 Enbridge as members of our organization, but we're  
10 primarily a producer-focussed organization and that is  
11 where most of my discussions are coming from.

12 Most of the oil and gas operations in the province are  
13 fairly small in nature. They tend to be either owner-  
14 operated facilities, or very small facilities where there  
15 is a number of wells that produce into a central facility  
16 that are operated by the landowners as best they can to be  
17 able to separate the oil and gas, have the oil trucked up  
18 to a refinery for further processing, or the natural gas  
19 treated once it gets to a central facility to make it a  
20 saleable product and then delivered into the Enbridge or  
21 EPCOR, or all consumer gas systems.

22 The oil and natural gas that is in the gallery  
23 pipelines is not market quality oil and gas. The natural  
24 gas contains water vapour. It may contain hydrogen  
25 sulfide, H<sub>2</sub> acid if it happens to be a sour field. It may  
26 contain heavy hydrocarbon portions in the natural gas that  
27 would make it not pipeline quality from Enbridge's  
28 standards, if it is too hot from an energy point of view.

1           In the case of the oil, in the oil facilities most of  
2 the oil -- most of the oil wells produce fairly large  
3 volumes of water, along with the oil. So in some cases,  
4 you may have an oil pipeline where upwards of 95 or 98  
5 percent of the fluid going through the pipeline is water.

6           From an Assessment Act point of view, it is still  
7 classed as an oil pipeline and assessed as such.

8           For the natural gas fields, specifically the ones in  
9 Norfolk county and some of the ones up in Oxford and Perth  
10 county, the natural gas reservoirs themselves tend to be  
11 fairly widespread. So the pipeline distances are longer.  
12 The wells themselves are more spread out.

13           In most of the cases, the operator of those fields  
14 makes deals -- has negotiations with the local  
15 municipalities to come up with what we call a road user  
16 agreement, where a lot of those pipelines are actually  
17 installed on the township road allowances under an  
18 agreement with the municipalities.

19           All of the above-ground facilities generally are on  
20 private property, associated with the individual wells, as  
21 their gas is delivered from the well head out to the edge  
22 of the road allowance where it is drawings with natural gas  
23 production from other wells brought to the central  
24 facilities.

25           At the central facilities, that water vapour is  
26 removed from the natural gas. If there is any free water  
27 in the pipeline along with the gas, it is removed. If the  
28 gas is too rich, there may be a refrigeration facility

1 where we remove the heavier hydrocarbons and if there is  
2 any H<sub>2</sub>S, then H<sub>2</sub>S would be stripped out.

3 It is really only downstream of that natural gas  
4 treating facility where the gas itself is truly pipeline  
5 quality, and it is delivered at that point usually through  
6 fairly short, higher-pressure pipelines into the Enbridge  
7 or EPCOR system where it is commingled with all of their  
8 gas that comes from outside the province.

9 Under the Assessment Act, there is really minimal  
10 distinction between the crude oil that is in our crude oil  
11 pipelines that may be -- the majority of which may be water  
12 or natural gas that is not pipeline quality natural gas  
13 that flows through those pipelines.

14 From an assessment point of view for a producer,  
15 there's at least three different types of assessments that  
16 may be assessed on the operator's properties. There is an  
17 assessment on the well heads themselves. There is  
18 assessment on the pipelines, which is what we're dealing  
19 with here. There is an assessment as well on any of the  
20 facilities and structures that handle multiple wells worth  
21 of facilities.

22 Most of our facilities -- be it compressor stations or  
23 oil batteries -- are on leased properties with landowners.  
24 We generally don't own the property that our facilities are  
25 on. We have a surface lease agreement.

26 So in that case, the assessment associated with the  
27 buildings, or the tanks, or the compressor stations is  
28 assessed usually against the landowner. The oil and gas

1 company, with an agreement with the landowner, reimburses  
2 him for what he pays for commercial taxes because we're  
3 there. But he pays that over and above his farm assessment  
4 or residential assessment, whatever else may make up his  
5 tax bill from the local municipality.

6 OPI submits the gathering lines, the ones we are  
7 dealing with are small volumes. They may be -- they may be  
8 anywhere from 2-inch to 6-inch, 8-inch diameter pipelines.  
9 But they're operating at very low pressures compared to the  
10 pipeline pressures that would be, say, in the Enbridge or  
11 the EPCOR systems. In one of the pipeline facilities that  
12 I am more familiar with, we're actually operating about a  
13 pound and a half, 2 pounds operating pressure within that  
14 pipeline.

15 That pipeline pressure is so low that even if a local  
16 landowner wanted to take natural gas off our system, we  
17 don't have sufficient pressure to be able to go through a  
18 regulator and still have natural gas of sufficient pressure  
19 that his burner that he could use it for home heating or  
20 corn running.

21 So to call our pipelines gas pipelines when they're at  
22 that low a pressure is -- it doesn't make a lot of sense.  
23 Those pipelines were installed at the size they were to  
24 allow the operator to reasonably get the gas from the wells  
25 themselves to the compressor site, which in some cases may  
26 be in the range of 20 to 30 miles away. Like, they're long  
27 spoke system. Other than Lagasco, all of the other  
28 operators that we represent as the OPI strictly have on-

1 shore facilities. So all of our, all of our pipelines all  
2 of our batteries all of our compressor sites are on shore.

3 Under this excessive methodology, as has been  
4 mentioned, some of our assessments are anywhere between 25  
5 and 55 percent of the gross revenue from that property that  
6 we end up paying in municipal taxes.

7 This is before we've even paid the landowner  
8 royalties, any of the operating costs, any of the -- any of  
9 the controllable costs within our operations.

10 So the impact assessment and the resulting taxes are  
11 stuff that we have no control over. They're withdrawn or  
12 they're -- our obligation is to pay, and we have no means  
13 of trying to control how much it's going to cost us. It is  
14 just a fixed fee. That's what has resulted and will result  
15 in the bankruptcies that we've been talking about between  
16 the Tribute assessment and now the Clearbeach assessment,  
17 and prematurely forcing operators to prematurely suspend  
18 operations just because they can't afford to pay the  
19 municipal assessment associated with their operations.

20 There's cases where operators are being forced to plug  
21 their wells and abandon their systems just because of the  
22 taxes.

23 The other option from a producer's point of view is to  
24 continue to pay municipal taxes to the point where all  
25 they're doing is paying municipal taxes and then, like in  
26 the Clearbeach case, they're forced into receivership. And  
27 now those facilities are questionable on whose obligation  
28 it is to plug and clean up the individual well sites, the

1 pipelines and the compressor stations.

2 From a well site point of view, there's some real  
3 danger that without proper monitoring of the wells  
4 themselves, they can become, from an environmental point of  
5 view, a very, very undesirable operation.

6 There's -- depending on the well construction, there  
7 could be cross-flow down-hole between producing oil and gas  
8 facilities and shallower ground water. There could be  
9 leaks that surface.

10 All of these issues that can happen at the point where  
11 there's not a viable operator looking after those wells,  
12 because in many cases those wells may end up just getting  
13 shut in, as I say, with the operator going into  
14 receivership, declaring bankruptcy. There is no longer a  
15 viable operator to look after the plugging.

16 So from the Oil and Gas Resources Act point of view,  
17 it now falls on the individual landowners. Individual  
18 landowners by and large don't have the expertise to be able  
19 to plug a well, nor have they entered into an oil and gas  
20 lease with the operating company with the expectation that  
21 they may be the ones on the hook to plug the well down the  
22 future. So it creates many issues that way.

23 It is -- at this point it is Lagasco that we're  
24 dealing with on this issue, but they're far from the only  
25 operators that have had concerns with MPAC assessments and  
26 the resulting taxes.

27 Clearbeach, who is the one I am referring to that is  
28 in receivership now, TAQA North, Metalore Resources,

1 Northern Cross, there is a list of many natural gas  
2 producers that have questioned their assessments from MPAC.

3 Most of them are on hold, pending the result of the  
4 Lagasco hearing here and in their Divisional Court. But it  
5 is not like Lagasco is the only company that has questioned  
6 their assessments. It is a problem for the whole industry,  
7 and it is an issue that, from a whole industry point of  
8 view, needs to get addressed.

9 Prior to Lagasco purchasing Dundee, Dundee had been  
10 dealing with MPAC, trying to come up with a fair and  
11 equitable means of assessing pipe lines.

12 We as an industry are more than prepared to pay our  
13 fair share of assessments to do with our operations. We  
14 just don't feel that 25 to 55 percent of our gross revenue  
15 is a reasonable level of taxation.

16 One of the options that was proposed at that point was  
17 that a delinquency table be added to the Assessment Act,  
18 where, because our pipelines are designed for the initial  
19 flow rate that comes from the wells, by the time the well  
20 has been on-stream and producing for 10 or 15 or 20 years,  
21 its flow rate is so much less that maybe the value of that  
22 pipeline should be somewhat -- somewhat decided by the age  
23 of the wells producing through it as well. That was  
24 something that was never -- has never gone anywhere besides  
25 just discussions with MPAC. But it's something where we  
26 need to get past MPAC's involvement and the Assessment Act.  
27 The Assessment Act needs to be changed to be converted  
28 to acknowledge there is a difference between gathering

1 pipelines, handling primary oil and gas production, and  
2 "pipe lines" the way the Assessment Act is currently  
3 written, that are primarily distribution and transmission  
4 lines within a utility setup, where the operator of the  
5 utility has complete care and control over how much gas or  
6 oil goes through that particular "pipe line."

7 That is my submission. I am more than prepared to  
8 answer any questions you've got.

9 MS. FRANK: Thank you, Mr. McIntosh. We're actually  
10 going to start with questions from Mr. Dodds.

11 MR. DODDS: Yes, thank you, Mr. McIntosh.

12 You went into some detail to explain some of the  
13 financial consequences to these companies or to the  
14 applicant and probably to other companies in this industry,  
15 plus some of the environmental consequences, and you do  
16 mention some are already -- are putting in appeals and have  
17 put in appeals.

18 And I suspect what you are hearing or at least what I  
19 heard from MPAC is that -- and the municipalities is that  
20 this is a -- requires a legislative solution.

21 Now, has the OPI, as a representative of the industry,  
22 have you made representations to the Minister of Finance?

23 MR. MCINTOSH: We've forwarded the submission that the  
24 OPI provided to this hearing, we forwarded that to the  
25 Minister of Finance, as well as the Minister of Energy. We  
26 deal primarily with the Ministry of Natural Resources as  
27 our regulators. They are -- they have been aware -- we've  
28 informed them of our high level of taxation for a number of



1 years, so they're familiar with our situation, but they're  
2 obviously not the regulator of the Assessment Act.

3 MR. DODDS: But you also mentioned that the applicant  
4 and probably other similar people in the industry, they're  
5 not objecting to paying taxes. They just want to pay a  
6 fair tax.

7 MR. McINTOSH: That's correct, yes.

8 MR. DODDS: Which means a different way of assessing.  
9 Now, once again, has the OPI ever drawn up any tables, or  
10 is there any examples of how obsolescence and depletion  
11 could be taken into account to have a more fair taxation  
12 system or a more fair assessment system?

13 Like, any representations to the ministers, I think  
14 you have to come in with some facts that support this, and  
15 has OPI done that or is thinking of doing that? Of  
16 providing alternatives to the minister?

17 MR. McINTOSH: As I mentioned with the Dundee rolls,  
18 when Dundee was suggesting options for MPAC, they had  
19 proposed the depletion table be added to the Assessment  
20 Act, but it never went farther than discussions between the  
21 industry and MPAC at that point.

22 I believe the Minister of Finance was aware of the  
23 discussions, but it hadn't got to the point where the  
24 Assessment Act needed to be modified, which may be the  
25 long-term solution.

26 MR. DODDS: From what I can gather, that seems to be  
27 the only solution, what I hear from the municipalities and  
28 what I hear from MPAC, that is the only solution.

1           Have any measures or any steps been taken to make  
2       formal presentations to the legislative body?

3           MR. McINTOSH: At this point, the formal solutions  
4       have been made through the MNR to talk to the government.  
5       But as far as formal -- formal representation to the  
6       Minister of Finance, at this point, no, it hasn't, other  
7       than the previous discussions with MPAC on assessing the  
8       gathering lines and acknowledging that that there's a  
9       disparity between the Assessment Act and the way it's been  
10      interpreted relative to the value of the assets.

11          MR. DODDS: So what do you think the next steps should  
12      be?

13          MR. McINTOSH: I think it is a multi-pronged step.

14          The OEB in its role is to -- part of its role is to  
15      support a viable oil and natural gas industry in the  
16      province.

17          As well, the OPI, through this submission and cc'ing  
18      the Minister of Energy and Finance and Natural Resources,  
19      is reinforcing what we've been saying to MPAC and to the  
20      MNR for a number of years, that there is an issue. It  
21      needs to get addressed.

22          At this point I look at the MPAC as basically the  
23      rule-followers, the Assessment Act the way it is written is  
24      being what is interpreted. That's one of the issues, is  
25      that the Assessment Act doesn't address a distinction  
26      between producers and pipeline companies.

27          MR. DODDS: Okay, thank you, no further questions.

28          MS. FRANK: Mr. Janigan, do you have any questions?

1 MR. JANIGAN: No, I don't. Thank you, Madam Chair.

2 MS. FRANK: Okay. Thank you, Mr. McIntosh. I also  
3 have no questions, so we appreciate that the OPI intervened  
4 in this case, and it has been very helpful to us.

5 MR. McINTOSH: Thank you very much for our  
6 involvement.

7 MS. FRANK: Okay. I think we will now turn to the OEB  
8 Staff, and I will ask Mr. Millar, do you have a  
9 presentation that you are going to provide?

10 **SUBMISSIONS BY MR. MILLAR:**

11 MR. MILLAR: I do, thank you very much, Madam Chair.

12 I actually -- I think many of the issues here have  
13 been well canvassed by the other parties, so I expect to be  
14 quite brief. I will run you through a few points and then  
15 I am happy to answer any questions that you may have.

16 I think as a starting point -- first, I do continue to  
17 rely on our pre-filed argument from October 20th, but we  
18 also filed the supplemental submissions for today's session  
19 a week or two ago.

20 So I think at the end of the day what most parties  
21 agree with is that, although this has been presented a  
22 number of ways and there is a number of sub-issues, there  
23 is really only a single question before the Board, and that  
24 is are the Lagasco pipelines, quote-unquote pipe line,  
25 within the meaning section 25 of the Assessment Act. And  
26 you will have seen OEB's staff submission, and that is that  
27 they are.

28 Now, this is a question of statutory interpretation

1 and as you have heard, and I think all parties agree that  
2 the proper approach to statutory interpretation is to read  
3 the words of the statute in their entire context and in  
4 their ordinary and grammatical sense, harmoniously with the  
5 scheme of the act, the object of the act, and the intention  
6 of the enacting legislative body.

7 Again, as you have heard, section 25(1) of the  
8 Assessment Act establishes two conditions for a pipeline to  
9 be considered a pipe line within the meaning of the act; is  
10 it used for the transportation or transmission of gas; and  
11 was the pipe line designated by the owner as a transmission  
12 pipe line?

13 Again, I don't intend to repeat the arguments of my  
14 friends or in fact the arguments of Board staff, which we  
15 have already made in writing. I think you have heard  
16 plenty on that, so I would simply refer to the argument  
17 that I have already filed on behalf of Board Staff on those  
18 two points, again which is what has led the Board staff to  
19 its conclusion that these are in fact pipe lines within the  
20 meaning of the act.

21 And Ms. Lunau discussed this and Mr. Tunley as well,  
22 but this view is consistent with the OEB's decision in the  
23 Tribute case, which as we have heard had very similar  
24 facts.

25 Now, I agree with Lagasco when they say that you are  
26 not formally bound by that decision. However, it certainly  
27 has persuasive values typically the OEB, like any other  
28 tribunal, will follow its own decisions unless there is a

1 good reason that it should not do so.

2 Given that the facts are exactly -- not exactly the  
3 same, but very, very similar, and the law hasn't changed,  
4 from Board Staff's point of view there is no reason to  
5 change what the Board decided in the Tribute case.

6 Now, the Tribute decision was also upheld on an appeal  
7 to the divisional court, as you have heard. Lagasco in its  
8 -- in the submission it made for this session argued that  
9 the court was simply deferring to the interpretation of the  
10 Board and that the court would have upheld the decision of  
11 the Board even had it come to the opposite conclusion about  
12 the words, using the reasonable standard of review that was  
13 in place at that time, that it simply deferred to whatever  
14 the Board said.

15 Now, with respect, that is simply speculation. We do  
16 not know what the court would have decided had the Board  
17 come to the opposite conclusion.

18 But I think it is instructive to look at what the  
19 court said, and here I am quoting from the court's decision  
20 which I have provided in Board Staff's submission, the  
21 initial submission from October 20th.

22 And what it says, if you look at page 10 there, we  
23 quote from that. Let me just see -- yes, you will see it  
24 at the top of the page there.

25 Speaking for the court, Mr. Justice Fregeau noted:

26 "What is implicit in these findings is that the  
27 OEB found no reason to go outside of the plain  
28 and ordinary meaning of the words used in the

1 statute. Put another way, the OEB found no  
2 reason to apply the technical meaning and  
3 understanding of the words as they are used in  
4 the oil and gas industry."

5 Here is the important part:

6 "This is consistent with the rules of statutory  
7 interpretation."

8 So there is a positive finding there. It is not  
9 simply that, oh, well, we're just going to defer to  
10 whatever the Board decided. He makes a positive statement  
11 there, that what the Board has done is consistent with the  
12 rules of statutory interpretation. Those are what I  
13 discussed at the beginning of my submission.

14 Now, I do concede that since this case came out, there  
15 has been a very important court case called Vavilov, which  
16 impacts the standard of review, and I cannot say for  
17 certain whether the court would come to the same conclusion  
18 today. But I do want to note the court didn't just simply  
19 say, well, deference is the standard, so we're just going  
20 to defer to what the Board said. There is a positive  
21 statement there to the effect that the court found that the  
22 Board had applied the rules of statutory interpretation.

23 Lagasco and Mr. McIntosh from the OPI speak forcefully  
24 to what are in its view the unfair tax burden that is  
25 imposed on pipe lines pursuant to the Assessment Act and  
26 its regulations, and I guess through the municipalities as  
27 well.

28 But whether or not one agrees with this view -- and I

1 did hear with interest the comments from my friends that,  
2 you know, we only have -- Lagasco is not the only taxpayer  
3 in Ontario and to some extent, taxation becomes a zero sum  
4 game where if you reduce someone's taxes, either someone  
5 else has to be raised or services are impacted, something  
6 like that. So we only have the Lagasco piece of the  
7 picture here.

8 But whether or not you agree with their assessment  
9 that their taxation is greater than it should be, that is  
10 not within the Board's purview.

11 These taxes, the provision to the Assessment Act are  
12 set by the provincial government including the associated  
13 regulations and then there is a role for the municipalities  
14 as well.

15 But the party that does not have a role here is the  
16 OEB. That is simply not within our jurisdiction to  
17 interfere with the rates that were established by other  
18 bodies. We have no jurisdiction over that and you have  
19 heard my friends discuss other forums for those complaints.

20 But I agree with them when they say it is not before  
21 the OEB.

22 Finally and very briefly, actually two more points.  
23 But one, there was a discussion -- I don't think much turns  
24 on this, but it was the discussion around for a period in  
25 it looks like the late 50s through the mid 60s, the OEB was  
26 actually the designating authority. And to do Staff's due  
27 diligence, I did make some efforts to pull up any documents  
28 we have with respect to that.

1           You will have seen my efforts were not successful, in  
2 part because the Board does not actually keep its own  
3 records from prior to 1980s. Those are at the archives.  
4 The archives has a gigantic stack of OEB documents in paper  
5 form that are poorly indexed, although there are some  
6 research guides that can assist you.

7           But in any event, you can't go to the archives now  
8 because of the pandemic. So I was spared the task of  
9 leafing through -- I think they actually measure these in  
10 feet. That is how you tell how many documents they have in  
11 metres and there was something like eight metres of  
12 documents, so I was spared that task.

13           At the end of the day, I don't know what turns on  
14 that, frankly, and my submission is it is not much.  
15 Whoever the designating authority was at the appropriate  
16 time, we have heard MPAC's evidence the only way we know  
17 about these pipelines is if they are designated.

18           So whether it was the OEB or the original owner of the  
19 pipelines, in my submission, not much turns on that.

20           I just wanted to make one final point and that is with  
21 respect to the Board's objectives, that a couple of parties  
22 have taken you to today. And maybe we could have them  
23 pulled up. It is section 2 of the OEB Act, or the Board's  
24 objectives for gas.

25           There was reference to two of those objectives today,  
26 and I just want to make sure that they are placed before  
27 the panel here in their entire context.

28           The one we heard the most about is objective 5.1 and



1 that is to facilitate the maintenance of a financially  
2 viable gas industry for the transportation, distribution  
3 and storage of gas.

4 My friends, Mr. Swan and Mr. McIntosh, took you to  
5 this provision, but I think they ended their recitation  
6 after the word "industry".

7 So the section does not end at "to facilitate the  
8 maintenance of a financially viable gas industry", period.  
9 It goes on to say "for the transmission, distribution and  
10 storage of gas." So it has to be read in its entire  
11 context.

12 And as you heard from Lagasco, they are not a  
13 transmission company, a distribution company or a storage  
14 company. They're a production company. So they obviously  
15 are part of Ontario's gas industry. But the section speaks  
16 more specifically to that.

17 And again, I don't know that too much turns on that.  
18 I just wanted to make sure that that section was read in  
19 its entire context.

20 Secondly, I heard a very brief reference to what I  
21 think was objective 2, which is to inform consumers and  
22 protect their interests with respect to prices and the  
23 reliability and quality of gas service.

24 Definitely that is one of the Board's objectives and  
25 one of the things you are meant to consider.

26 But of course I don't recall if this is specifically  
27 on the evidence or not, but I don't believe there is any  
28 dispute about this. Ontario's sourced gas is less than one

1 percent of the gas used in Ontario. The vast majority of  
2 gas consumed by consumers in Ontario comes from outside the  
3 province.

4 So whatever costs, taxation costs get passed through  
5 the commodity portion of the rate from local gas is frankly  
6 -- I accept it is very important to the OPI, but it would  
7 have no material impact on the prices paid by consumers.

8 So in my view, that particular objective of the Board  
9 is not relevant to this case.

10 Madam Chair, I said I would be short and I think I am  
11 done. So I am happy to answer any questions you may have.

12 MS. FRANK: I think we will start with Mr. Janigan  
13 with some questions.

14 MS. FRANK: Mr. Janigan, you are on mute.

15 MR. JANIGAN: I don't have too many questions in  
16 relation to Mr. Millar's submission. I take it -- there  
17 have been some submissions earlier that because we have no  
18 evidence of designation we cannot derive the fact that  
19 there was designation from the circumstances. I take it  
20 that that inference would not be correct?

21 MR. MILLAR: In my submission, no. There is no direct  
22 evidence in the sense that you do not have the piece of  
23 paper that was given to MPAC in 1957 saying, we hereby  
24 designate. But I tend to adopt the view presented by MPAC,  
25 which is that, first, there is no reason for them to keep  
26 those individual pieces of paper, which would have come in  
27 over many, many, many years, and record-keeping in the  
28 '50s, '60s, '70s perhaps was not -- first, it was not as

1 easy as it is today, and the standards were different.  
2 There's evidence of that on the record.

3 But I do accept MPAC's position that the only way  
4 these get onto the rolls, and you heard Ms. Lunau speak to  
5 this, is if somebody designates them. MPAC doesn't walk  
6 around with a metal detector and a measuring tape to try to  
7 find where all these pipelines are. They get that  
8 information from the owners.

9 They have been on the assessment rolls, in some cases,  
10 for decades, and I guess it would seem odd to me that the  
11 owners would not have challenged that previously, if they  
12 had never designated them in the first place, if there were  
13 some error or something like that and there had been no  
14 designation. I would think it would be 2020 that we would  
15 be hearing about that, or 2016, for that matter.

16 MR. JANIGAN: What I have difficulty getting my head  
17 around, apparently these, if they get on the rolls, they  
18 stay on the rolls as being designated. If we take the  
19 plain meaning of section 25(1), it has to be designated by  
20 the owner. Was it designated by the OEB? Does that meet  
21 the conditions of 25 (1)?

22 MR. MILLAR: I think it does, and here I'm really just  
23 parroting what Ms. Lunau and perhaps Ms. Poole said as  
24 well, was that that was the regime that was in place when  
25 they had to be designated. What happened was, as I  
26 understand it, once they are designated, they go onto the  
27 rolls and then there is a brief period where you dispute  
28 that, but after that it becomes set in stone. And that was

1 the regime at the time.

2 So when you are looking at that provision, it was did  
3 they enter the rolls correctly. That is how I read it,  
4 anyways, and I think that's consistent with what you heard  
5 from Ms. Lunau. That's it. I do to some extent defer to  
6 her on that. I do not work at MPAC.

7 MR. JANIGAN: Thanks very much. Those are all my  
8 questions.

9 MS. FRANK: Mr. Dodds, do you have any questions?

10 MR. DODDS: No, I have no questions, thank you.

11 MS. FRANK: Mr. Millar, I also have no questions, so  
12 thank you for your presentation and your answers.

13 We will turn to Mr. Swan to allow him the opportunity  
14 to reply. I want to remind you, Mr. Swan, that you're  
15 limited to responding to the comments from other parties,  
16 not to go over your evidence again. Mr. Swan.

17 **REPLY SUBMISSIONS BY MR. SWAN:**

18 MR. SWAN: I understand that, and thank you, Madam  
19 Chair. There are a handful of points that I think are  
20 important that I make and I will make them largely in the  
21 sequence in which they arose.

22 The first is that Ms. Lunau made reference to -- and  
23 you do not have to turn this up, but she made reference to  
24 the British Columbia Court of Appeal case in Burlington  
25 Resources v. Peace River and has suggested that that was --  
26 there was a different question before that Board, and that  
27 is true, but that's not why the case was referred to.

28 Lagasco referred to the case to make the point that

1 technical and industry information and definitions may  
2 properly be applied by a statutory tribunal, and that point  
3 is made at paragraphs 54 and 69 of that case.

4 And a related point to that, in reference to the -- a  
5 Divisional Court's decision in the Tribute case.

6 Both Mr. Tunley and Mr. Millar made a point of saying  
7 that the Divisional Court referred to the application of  
8 plain and ordinary meaning of words and what the court said  
9 about that. What they did not then take you to, though,  
10 was paragraph 54 of the Divisional Court's decision.

11 And the court said the following:

12 "We further find that it's the OEB's decision to  
13 apply the common and ordinary meaning of the  
14 words used in section 25(1) of the Assessment Act  
15 and the result knowing from that to be within the  
16 range of possible and acceptable outcomes."

17 That is another way of applying the reasonableness  
18 standard; in other words, to say that is one of many  
19 possible reasonable outcomes, but it does not mean it is  
20 the only approach.

21 And as the B.C. Court of Appeal demonstrated, the  
22 application of technical and industry terms can also  
23 appropriately be applied.

24 The next point that I would like to make is that there  
25 is actually no evidence that the OEB ever designated any of  
26 these pipelines in the 1950s or '60s.

27 But I think I need to add to that that the great  
28 majority of the pipelines, the gathering lines in this

1 case, post-date 1966. Not all, but the great majority.

2 Mr. Tunley made quite a point of arguing that there  
3 were other fora in which Lagasco might find relief, and he  
4 referred to an Assessment Board proceeding.

5 But if the question is that the Assessment Board  
6 simply applies the values and the table and the  
7 mathematical exercise under the regulation, if a gathering  
8 line is found to be a "pipe line", there is actually no  
9 real discretion at all in any meaningful sense. That is  
10 largely a hollow avenue of applying mathematics there.

11 All of the suggestions seem to be, well, there must be  
12 a solution somewhere else. But in fact the solution is  
13 here and in the matter that is before the Board, in that  
14 the OEB is the specialized tribunal that the legislature  
15 has expressly delegated with the responsibility for  
16 determining whether any particular pipeline qualifies as a  
17 section 25 "pipe line", and, in our submission, these  
18 pipelines in issue simply don't. They're all tied to  
19 depleting wells. None of them are transmission lines, and  
20 the two concepts are radically different.

21 Ms. Poole said that there simply wasn't any financial  
22 or other information in the record. But that, with all  
23 respect, simply isn't true.

24 There is extensive interrogatory answers that were put  
25 on the record, and both MPAC and the municipalities had the  
26 right, and did ask a number of questions by way of  
27 interrogatory, as did Board Staff, and there is extensive  
28 financial disclosure provided in that, including all

1 documents arising out of the Dundee transaction and so on.

2 And among the answers to that is one that squarely  
3 addresses one of the very points in which it was suggested  
4 there was no evidence, because in answer 3(h), in response  
5 to the Board Staff's enquiries, it is expressly stated that  
6 the issues that were dealt with in the Tribute case was one  
7 of the major contributing factors that led Clearbeach, that  
8 is Tribute's successor, to filing a notice in July 2020  
9 under the Bankruptcy and Insolvency Act, and we also know  
10 that Dundee had to seek creditor protection under the  
11 Company's Creditors Arrangement Act in 2017.

12 So in fact there is such evidence and there is that  
13 express statement in relation to what happened to Tribute  
14 when it ultimately became Clearbeach and passed into a  
15 filing under the Bankruptcy and Insolvency Act.

16 In addition to that, as I noted, there is extensive  
17 disclosure, financial and other disclosure, in the answers  
18 to interrogatories.

19 So those were the additional points I wish to make,  
20 Madam Chair and members of the Board, by way of reply.

21 MS. FRANK: Thank you. Those were helpful.

22 With that, I believe this concludes all aspects of the  
23 oral hearing. As you appreciate, it will take some time  
24 for this Panel to make their considerations and then issue  
25 the decision. So there are no other process requirements  
26 at this time, other than the Panel doing their  
27 considerations.

28 So once again, thank you to all parties, and this

1 concludes our first and hopefully we consider it successful  
2 virtual oral hearing.

3 Okay, thank you to all.

4 MR. SWAN: Thank you.

5 MR. MILLAR: Thank you, Madam Chair.

6 --- Whereupon the hearing adjourned at 12:35 p.m.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28