



**Lagasco Inc.**

**Application for the Classification of Certain Natural Gas Pipelines**

**PROCEDURAL ORDER NO. 6**

**January 18, 2021**

On May 25, 2020, Lagasco Inc. (Lagasco) applied to the Ontario Energy Board (OEB) for an order declaring that the natural gas pipelines owned by Lagasco in Haldimand County are not "pipe lines" within the meaning of section 25(3) of the *Assessment Act*, R.S.O. 1990 (Assessment Act), and were not "pipe lines" within the meaning of the Assessment Act at any time on or after January 1, 2015. In its application, Lagasco requested an oral hearing.

A Notice of Hearing was issued on June 22, 2020. The Municipal Property Assessment Corporation (MPAC), the Ontario Petroleum Institute (OPI) and a number of jointly represented municipalities being the County of Elgin, County of Lambton, Haldimand County, Municipality of Bayham, Municipality of Central Elgin, Municipality of Chatham-Kent, Municipality of Dutton Dunwich, Municipality of West Elgin, Township of Malahide and the Township of Southwold (the Municipalities) applied for intervenor status.

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

Procedural Order No. 2 was issued on August 10, 2020. The procedural schedule set forth in Procedural Order No. 1 was cancelled and replaced by a revised schedule that provided for the filing of intervenor evidence, interrogatories and responses on that evidence, and submissions on the merits of holding an oral hearing versus a written hearing or an electronic hearing.

Procedural Order No. 3 was issued on September 23, 2020. The OEB found that there would be no benefit to holding an oral hearing. The OEB set a schedule for written final argument.

Lagasco filed with the OEB its Argument-in-Chief on October 8, 2020. OEB staff and intervenors filed submissions on October 20, 2020. Lagasco filed its written reply submissions on November 2, 2020.

Procedural Order No. 4 was issued on November 9, 2020. The OEB determined that it would be assisted by supplemental oral argument and set the date for a transcribed videoconference at November 24, 2020.

Procedural Order No. 5 was issued on November 13, 2020. The OEB changed the date of the supplemental oral argument to December 2, 2020, in order to better accommodate participant schedules.

Supplemental oral arguments were held on December 2, 2020.

On December 30, 2020, OPI sought permission to file new information pursuant to rule 11.02 of the OEB's *Rules of Practice and Procedure* (OPI Evidence), that it submits demonstrates that "MPAC will assess the pipeline for taxation despite the fact that the owner has never provided any information about the pipelines to MPAC, or submitted a designation that they are "pipelines" under section 25 of the Ontario *Assessment Act*."

On January 8, 2021, MPAC filed a response to the OPI Evidence. In its response, MPAC stated that the OPI evidence is not new because it was known and available prior to the commencement of the proceeding and, in any event, OPI had several opportunities during the course of the proceeding to raise it.

On January 8, 2021, the Municipalities filed a response to the OPI Evidence in which they agreed with the position of MPAC.

On January 14, 2021, OPI filed a reply to the responses of MPAC and the Municipalities. In its reply, OPI stated that the timing of the OPI Evidence does not change its importance to the issues before the OEB or the consequences that would result from making a decision without the benefit of the evidence.

On January 14, 2021, Lagasco filed a response to the OPI Evidence and the responses of MPAC and the Municipalities. In its response, Lagasco noted that the OPI evidence directly contradicts MPAC's contention that it can only assess a pipeline which has been designated by its owner, and if that contention is incorrect, then it is impossible for the OEB to conclude that the pipelines at issue were ever designated by the owner pursuant to section 25(1) of the *Assessment Act*. Lagasco reiterated that, in its view, the OEB's decision in this matter will have significant and potentially severe consequences for Ontario's oil and gas industry.

## Findings

The OEB has decided that it will allow the OPI Evidence onto the record in this proceeding.

The OEB agrees with MPAC and the Municipalities that the evidence is not "new" and that it should have been filed earlier in the proceeding. OEB is thus not allowing the OPI Evidence on the record on the basis of its compliance with Rule 11:02.

However, the evidence may be consequential in the determination of an important issue in this proceeding. The OEB's admission of the OPI Evidence follows its balancing of the need for fairness to the parties as well as the objective of ensuring finality in proceedings with the potential importance of the evidence to the decision in issue. This allowance should not be viewed as altering the restrictions in the OEB Rules regarding the filing of late evidence.

The OEB believes that it could be assisted by OPI's evidence with respect to the fulfillment of the requirement for owner designation in the classification of a transmission pipeline pursuant section 25(1) of the Assessment Act. The OEB finds that it is appropriate to have all potentially relevant information on the record to allow for a comprehensive review and decision on this application.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

**IT IS THEREFORE ORDERED THAT:**

1. Pursuant to rule 11.01 and rule 1.03 of the OEB's *Rules of Practice and Procedure*, the OEB will permit OPI's Evidence to be added to the record of this proceeding.
2. OEB staff and intervenors shall request any relevant information and documentation from OPI that is in addition to the OPI Evidence already filed, by written interrogatories filed with the OEB and served on all parties, by **January 26, 2021**.
3. OPI shall file with the OEB complete written responses to all interrogatories, and serve them on intervenors, by **February 5, 2021**.
4. OEB staff and intervenors may revise and refile their written submissions with the OEB only as they relate to the new evidence, and serve them on all parties, by **February 15, 2021**.
5. Lagasco may revise and refile its written reply submissions with the OEB only as they relate to the new evidence, and serve them on intervenors, by **February 25, 2021**.

All materials filed with the OEB must quote the file number, **EB-2019-0166**, and be submitted in a searchable / unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at [www.oeb.ca/industry](http://www.oeb.ca/industry). We encourage the use of RESS; however, parties who have not yet [set up an account](#), may email their documents to [registrar@oeb.ca](mailto:registrar@oeb.ca).

All communications should be directed to the attention of the Registrar and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Ritchie Murray at [ritchie.murray@oeb.ca](mailto:ritchie.murray@oeb.ca) and OEB Counsel, Michael Millar at [michael.millar@oeb.ca](mailto:michael.millar@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto, **January 18, 2021**

**ONTARIO ENERGY BOARD**

*Original Signed By*

Christine E. Long  
Registrar