

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF THE *Ontario Energy Board Act*, S.O. 1998, c.15, Schedule B, and in particular Section 21(2) thereof;**

**AND IN THE MATTER OF the *Assessment Act*, R.S.O. 1990, c.A.31, and in particular Section 25(3) thereof;**

**AND IN THE MATTER OF an Application by Lagasco Inc. for an Order determining whether or not the natural gas pipelines owned and operated by Lagasco Inc. in Haldimand County are gas transmission pipelines;**

**REVISED SUBMISSIONS OF THE  
MUNICIPAL PROPERTY ASSESSMENT CORPORATION (“MPAC”)**

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**PART 1A – REVISIONS TO ORIGINAL SUBMISSIONS**

1. The additional evidence provided subsequent to the hearing of this Application on December 2, 2020 simply confirms what MPAC has previously advised this Board with respect to the standard procedures for notifications, designations, and the assessment of pipe lines, generally.

2. This information is detailed in:

a. the Affidavit of Ryan Ford sworn July 29, 2020<sup>1</sup>;

b. the Supplementary Affidavit of Ryan Ford sworn January 26, 2021<sup>2</sup> in response to the Affidavit of Jim McIntosh, filed on behalf of the Ontario Petroleum Institute (“OPI”) and sworn on December 30, 2020<sup>3</sup>;

c. MPAC’s responses to the interrogatories, filed February 11, 2021; and

d. MPAC’s Written Submissions filed on October 20, 2020, in particular, paragraphs 52-61 (61-69 in this document).

3. The McIntosh Affidavit appeared to question MPAC’s adherence to its described designation mechanism<sup>4</sup>, as well as “assuming”<sup>5</sup> that MPAC uses maps submitted to the

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<sup>1</sup> MPAC Evidence - Affidavit of Ryan Ford, sworn July 29, 2020 (“Ford Affidavit”).

<sup>2</sup> MPAC Evidence - Affidavit of Ryan Ford, sworn January 26, 2021 (“Supplementary Ford Affidavit”).

<sup>3</sup> OPI Evidence – Affidavit of Jim McIntosh, sworn December 30, 2020 (“McIntosh Affidavit”).

<sup>4</sup> McIntosh Affidavit, at para. 3.

<sup>5</sup> McIntosh Affidavit, at para. 9.

Ministry of Natural Resources and Forestry (“MNR”) to estimate pipe lines.

4. In response, MPAC submitted the Supplementary Ford Affidavit, reiterating MPAC’s standard procedures for assessing pipe lines<sup>6</sup>, which relies on receiving information in accordance with the reporting requirements under s. 25 of the *Assessment Act*.

5. The Supplementary Ford Affidavit also detailed MPAC’s attempts to obtain up to date and accurate information with respect to the TAQA pipe lines in response to the McIntosh Affidavit<sup>7</sup>, but it is important to remember that the TAQA pipe lines are not the subject of this Application.

6. The Supplementary Ford Affidavit also refuted OPI’s allegation that MPAC obtains information about pipe lines from MNR<sup>8</sup>.

7. There have been no further challenges to MPAC’s evidence.

8. The additional evidence therefore does not raise any new issues to be addressed by the Board, and does not necessitate any revisions to MPAC’s Final Submissions filed on October 20, 2020.

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<sup>6</sup> Supplementary Ford Affidavit, at para. 5.

<sup>7</sup> Supplementary Ford Affidavit, at paras. 6-11.

<sup>8</sup> Supplementary Ford Affidavit, at para. 12.

## PART **1B** – OVERVIEW (**ORIGINAL SUBMISSIONS**)

4.9. This Board has jurisdiction to determine whether Lagasco Inc.’s (“Lagasco”) gathering pipe lines are subject to assessment under s. 25 of the *Assessment Act* (“*Act*”) as pipe lines that transport or transmit gas. It has been asked to make this same determination previously, and held that gathering pipe lines are used for the “transportation” of gas in the ordinary meaning of that word, as they are used to move or transport gas from one location to another, and are therefore correctly assessed for municipal tax purposes under s. 25 of the *Act* (“Tribute Decision”).<sup>9</sup> The OEB’s decision was subsequently upheld on appeal to the Divisional Court.<sup>10</sup>

2.10. This Board has no jurisdiction to determine the ‘valuation for tax purposes’ of any pipe lines or whether the prescribed valuation is ‘unjust’.

3.11. The *Assessment Act* at s. 25 defines a “pipe line” as follows<sup>11</sup>:

“pipe line” means a pipe line for the transportation or transmission of gas that is designated by the owner as a transmission pipe line and a pipe line for the transportation or transmission of oil, ... but does not include a pipe line or lines situate wholly within an oil refinery, oil storage depot, oil bulk plant or oil pipe line terminal.

4.12. O. Reg. 282/98 (“Regulation”) sets out three sets of regulated rates based on the type and diameter of the pipe line: “offshore pipe lines”, “plastic field gathering pipe lines

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<sup>9</sup> Tribute Resources Inc. OEB Decision dated May 5, 2016, at p. 6

<sup>10</sup> *Tribute Resources Inc. v. Ontario Energy Board*, 2018 ONSC 265 (Div. Ct.)

<sup>11</sup> *Assessment Act*, R.S.O. 1990, c. A.31, as amended, s. 25(1).

and plastic gas distribution pipe lines” and “pipe lines other than those to which Table 1 or 2 applies” (“Regulated Rates”).<sup>12</sup>

5-13. Lagasco Inc.’s gathering pipe lines “move”, “transfer”, “take”, and “deliver” gas, and are used for “transporting” gas.<sup>13</sup> Therefore they “transport gas” as described in the *Act* and, as clearly evidenced by the regulation of rates for “field gathering pipe lines” in the *Act*, they are properly assessed based on the Regulated Rates.

## PART II – FACTS

### Background

6-14. Lagasco’s pipe lines are located in Haldimand County in southwestern Ontario (“Pipe Lines”). The Pipe Lines were purchased by Lagasco from Dundee Oil and Gas Limited (“Dundee”) on November 16, 2018.

7-15. Lagasco describes its Pipe Lines as part of a natural gas gathering system whereby smaller gathering pipe lines connect natural gas production wells located across Haldimand County into a main gathering pipeline, which then “moves” the natural gas produced by the wells to a treatment facility.<sup>14</sup> The purpose of the Pipe Lines is to

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<sup>12</sup> *Assessment Act*, R.S.O. c.A.31 s.2(2)(d); O. Reg. 282/98, Part X, Tables 1, 2, and 3.

<sup>13</sup> Lagasco Inc. Application Record – Affidavit of Jane Lowrie at paras. 5, 6, 7, 12, 15 and 17.

<sup>14</sup> Lagasco Inc. Application Record – Affidavit of Jane Lowrie at para. 5.

efficiently “collect” the natural gas, “take it” to the treatment facility and then “deliver it” to the local distribution company.<sup>15</sup>

~~8-16.~~ Lagasco indicates that its Pipe Lines are low pressure steel lines of various diameters, and the main pipe line systems are comprised of either four (4), six (6) and eight (8) inch nominal pipe size steel pipelines.<sup>16</sup>

### **Lagasco’s Pipe Lines**

~~9-17.~~ Lagasco’s Pipe Lines consist of:

- a. 7,379,540.5 feet assessed under Table 1 (Offshore pipe lines);
- b. 320,193.19 feet assessed under Table 2 (Plastic field gathering pipe lines);  
and
- c. 290,596.24 feet assessed under Table 3 (Other pipe lines).<sup>17</sup>

~~10-18.~~ Lagasco has not disputed the length, diameter, age or type of pipe line as recorded by MPAC.

~~11-19.~~ The Pipe Lines were first assessed for taxation when they were installed, with some installations dating back to 1957. MPAC’s standard procedure when advised by

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<sup>15</sup> Lagasco Inc. Application Record – Affidavit of Jane Lowrie at para. 7.

<sup>16</sup> Lagasco Inc. Application Record – Affidavit of Jane Lowrie at para. 6.

<sup>17</sup> MPAC Evidence – Affidavit of Ryan Ford, at para. 10.

owners that new pipe line has been installed is to confirm the location, type, pipe diameter and length, and year installed. Once this information has been confirmed, MPAC adds the new pipe line to the assessment roll for the municipality. For example, for pipe line that was installed in 1981, MPAC would have received this information from the pipe line company likely in 1981. On receiving the information, the Pipe Line would have been assessed on the next assessment roll (for taxation in 1982).<sup>18</sup>

[12.20.](#) MPAC relies on pipeline companies to report or designate their pipe lines, and it assesses (or ceases to assess) the pipe lines based on the information, reports and designations it receives.<sup>19</sup>

[13.21.](#) Lagasco's Pipe Lines are being treated similarly to other pipe line companies.<sup>20</sup>

### PART III – ISSUES

[14.22.](#) There are two main issues:

(1) are the Pipe Lines used ***for the***

**a. transportation or**

**b. transmission of gas?**

(2) have the Pipe Lines been ***designated by the owner?***

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<sup>18</sup> MPAC Evidence – Affidavit of Ryan Ford, at para. 9, and Exhibit A.

<sup>19</sup> MPAC Evidence – Affidavit of Ryan Ford, at para. 8.

<sup>20</sup> MPAC Evidence – Affidavit of Ryan Ford, at para. 4.



## PART IV – THE LAW

### Jurisdiction of the Ontario Energy Board (OEB)

~~15-23.~~ The OEB's jurisdiction in this application is limited to making a determination as to whether the Pipe Lines are "pipe lines" to be assessed pursuant to s. 25(1) of the *Act*.<sup>21</sup>

~~16-24.~~ The Assessment Review Board has the jurisdiction to make any determinations under s. 40 of the *Act* as to whether the assessment is either too high or too low, or whether the incorrect Regulated Rates have been applied to the Pipe Lines.

~~17-25.~~ Much of Lagasco's evidence, responses to interrogatories, and submissions in this application refer to what it perceives as "unjust", "unfair", "irrational", or disproportionate consequences of the tax regime when the Regulated Rates are applied to its Pipe Lines.<sup>22</sup> This has no bearing on a determination under s. 25(3) of the *Act*, and is outside the OEB's jurisdiction on this application.

~~18-26.~~ Lagasco also argues that an interpretation finding that gathering pipe lines are included in the Regulation under "field gathering pipe lines" would be "nonsensical and unfair", and "illogical and oppressive".<sup>23</sup>

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<sup>21</sup> *Assessment Act*, R.S.O. 1990, c.A.31 at s. 25(3).

<sup>22</sup> Lagasco Response to OEB Interrogatory 2b; Lagasco Inc. Application Record – Affidavit of Jane Lowrie at para. 15; Lagasco written submissions at paras. 1, 10, 29 and 39.

<sup>23</sup> Lagasco written submissions, at para. 39.

[19-27](#). The OEB is bound to apply the statute as it is written, regardless of any perceived notions of ‘unfairness’ on the part of the taxpayer. The result of the statute is not the decision of the adjudicative body.<sup>24</sup>

[20-28](#). In any event, there is no unfairness in this case. While Lagasco may disagree with the rates set by the Minister, the Regulated Rates are applied to all pipe lines assessed under s. 25 in Ontario. For 2020 taxation, there are approximately 315.3 million feet of pipe line assessed pursuant to s. 25. Lagasco’s Pipe Lines are not being treated any differently than other s. 25 pipe lines in Ontario.<sup>25</sup>

### **Statutory Interpretation**

[21-29](#). The ordinary rules of statutory interpretation apply to the *Act*: the provisions of the *Act* must be read in their statutory context having regard to the ordinary and grammatical meaning of the words used, the scheme and object of the *Act* and the intention of the legislature.<sup>26</sup>

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<sup>24</sup> *Yonge Street Hotels Ltd. v. Municipal Property Assessment Corp.*, Region No. 9, 2005 CanLII 14438 (ON CA) at para. 24.

<sup>25</sup> MPAC Evidence – Affidavit of Ryan Ford, at para. 8.

<sup>26</sup> *Corporation Notre-Dame de Bonsecours v. Communauté urbaine de Québec et al.*, [1994] 3 S.C.R. 3 at 20.

## Scheme of the Legislation

### (a) Purpose

[22.30.](#) The purpose of the *Assessment Act* and the *Municipal Act, 2001* is to distribute the annual cost of municipal services to taxpayers based on the relative assessed values of property in the municipality.

### (b) Operation

[23.31.](#) MPAC assesses all land each year. The assessments of all land in a municipality are listed on the assessment roll that MPAC provides or ‘returns’ annually to each municipality. Municipalities use their assessment roll to set their tax rates and, therefore, the amount of taxes due from each ratepayer.<sup>27</sup>

[24.32.](#) For most land, MPAC must determine its ‘current’ or transaction value (“Current Value”). However, the *Act* directs specific valuation rules for certain land, including railway land, farm land, utility and transportation companies, public utilities and pipe lines. The *Act* also gives the Minister authority to regulate the manner in which current values must be determined.<sup>28</sup>

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<sup>27</sup> *Assessment Act*, R.S.O. 1990, c. A.31, as amended, ss.1 (‘current value’, ‘land’), 3(1), 14(1), 19(1), 36(1), 37(1), 39(1); *Municipal Act, 2001*, S.O. 2001, c.25, as amended, ss. 289, 307, 312 (2), and (6).

<sup>28</sup> *Assessment Act*, R.S.O. 1990, c.A.31, ss.1 (“current value”), 2(2)(d), 3, 7(1) and (2), 14(1), 19(1), 19(2.1) and (5), 24, 27, and 30.

[25-33](#). MPAC has an onus to ensure that land is assessed correctly. However, once Notices of Assessment are delivered, it is the responsibility of the assessed person to raise issues in respect to the assessments. If no issues have been raised, the returned assessment is deemed to be valid and binding, notwithstanding any error.<sup>29</sup>

### **Assessment of Pipe Lines**

[26-34](#). The *Act* has a very expansive definition of land. It includes anything “intended to remain permanently in its location.” Assessable land includes “items not considered fixtures ... as long as they are placed upon or affixed to land with some degree of permanency.” ‘Land’ includes such things as machinery, equipment, boats permanently moored to land, seasonal or recreational trailers, and billboards.<sup>30</sup>

s. 1 ('land'):

“land”, “real property” and “real estate” include, ...

(d) all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to land,

(e) all structures and fixtures erected or placed upon, in, over, under or affixed to a highway...<sup>31</sup>

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<sup>29</sup> *Assessment Act*, R.S.O. 1990, c.A.31, ss. 40 (1), (8), and 41; *Scott et al. v. Municipal Property Assessment Corporation*, et al. (12 February 2015), (Ont. A.R.B.) [unreported], [2015] O.A.R.B.D. No. 64 at paras. 37 and 38.

<sup>30</sup> *Assessment Act*, R.S.O. 1990, c.A.31, s. 1 ('land'); *1518756 Ontario Inc., et al. v. Municipal Property Assessment Corporation*, et al. (2008) 88 O.R. (3d) 211 (Ont. S.C.J.) at 220-221; *aff'd* (2009), 248 O.A.C. 114 (Ont. Div. Ct.); [2009] O.J. No. 1119; leave *ref'd* (3 July 2009), (Ont. C.A.) [unreported] ; *Carsons' Camp Ltd. v. Municipal Property Assessment Corporation et al.* (2008), 88 O.R. (3d) 741 (C.A.) at paras. 13 and 26; *Re Marley & Sandwich*, [1932] O.W.N. 178 (C.A.) at 178.

<sup>31</sup> *Assessment Act*, R.S.O. 1990, c.A.31, as amended, s. 1.

[27-35.](#) Pipe lines are 'land' as defined in the *Act* and, therefore, they are subject to assessment and taxation for municipal purposes.

[28-36.](#) Pipe lines for the transportation or transmission of gas or oil as defined in s. 25 of the *Act* are assessed at a rate per foot of pipeline based on the Regulated Rates. This type of assessment is referred to in the assessment industry as a 'linear' assessment ("Linear Method").<sup>32</sup>

[29-37.](#) Under the Linear Method, there are three sets of rates based on the type of pipe line:

- a. Offshore pipe lines
- b. Plastic field gathering pipe lines and plastic gas distribution pipe lines
- c. 'Other' pipe lines.

[30-38.](#) The assessment of a pipe line is calculated by:

- a. First determining its type (offshore, gathering, or other) and therefore, the table under the Regulation used to calculate the value.<sup>33</sup>
- b. Once the appropriate table is selected, the pipe line's outside diameter determines the rate. For example, the assessment of a Pipe Line that is an

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<sup>32</sup> O. Reg. 282/98, Part X, Tables 1, 2, and 3.

<sup>33</sup> O. Reg. 282/98, Part X, Tables 1, 2, and 3.

offshore pipe line 12,321 feet long and 2 inches in diameter will be assessed under Table 1,

Outside Diameter (in inches)	Rate (in dollars per foot)
...	...
2 to 2.5	16.24
...	...

- c. The Pipe Line's length (12,321 feet) will be multiplied by the regulated rate (\$16.24 per foot) to arrive at a value of \$200,093.04.
- d. This value is then reduced by the regulated depreciation in Table 4,

Year of Installation of Pipe Line	Percentage Reduction
...	...
1978	80
...	...

Therefore, the assessed value is \$200,093.04 less 80% for depreciation: \$40,018.60. Assessment values are rounded down the nearest \$1,000 or \$40,000.<sup>34</sup>

[34-39.](#) The special assessment and valuation rules for pipe lines in section 25 of the *Act* recognize their unique nature.

- a. Firstly, pipe lines are assessed to their owner (the 'pipe line company'), rather than to the owner of the land under or over which the pipe line runs.<sup>35</sup>

<sup>34</sup> MPAC Evidence – Affidavit of Ryan Ford, at para. 6.

<sup>35</sup> *Assessment Act*, R.S.O. 1990, c.A.31, as amended, s. 25(14).

- b. Secondly, pipe lines are assessed based on the Linear Method, a regulated value calculated by multiplying the length of the pipe line in feet by the applicable rate, and then depreciating that value based on the year of installation.<sup>36</sup>

[32.40.](#) All other pipe lines not subject to these special assessment and valuation rules, such as pipe lines located within an oil refinery, are assessed and valued pursuant to the 'normal' valuation rules: they are assessed at their current value to the owner of the property on which they are located – the "Current Value Method".<sup>37</sup>

[33.41.](#) Pipe lines are taxable whether they are assessed under s. 25 by the Linear Method, or by the Current Value Method. The legislative provision under which land is valued has no bearing on its liability for assessment and taxation.<sup>38</sup>

[34.42.](#) If Lagasco is successful in this application, the normal assessment and valuation rules will apply to its Pipe Lines. Municipal taxation rates would continue to apply to the Pipe Lines regardless of the method by which they are valued, but the assessment will be to the owners of the parcels under or over which the pipe lines run, not to Lagasco.<sup>39</sup> This means that the current value of the Pipe Lines will be divided and added to the assessments of the underlying land under or over which the Pipe Lines run. Additionally, depending on the nature of the agreement with the property owners, the Current Value

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<sup>36</sup> O. Reg 282/98, as amended, Part VII, s. 41(1).

<sup>37</sup> *Assessment Act*, R.S.O. 1990, c.A.31, as amended, ss. 17(1) and 19(1).

<sup>38</sup> MPAC Response to OEB Interrogatory 1b.

<sup>39</sup> MPAC Response to OEB Interrogatory 1c.

Method may require Lagasco to negotiate property taxes annually with thousands of property owners.<sup>40</sup>

Land assessed against owner

17. (1) Subject to section 18, land shall be assessed against the owner.

~~35.43.~~ Lagasco owns approximately 1,513 miles (8 million feet) of Pipe Line running across multiple municipalities. Even if the Pipe Lines run across only one property per mile, this means that 1,513 property owners will see their assessments increased by the value of the Pipe Line crossing their property if the Pipe Lines are valued under the Current Value Method.<sup>41</sup>

~~36.44.~~ The assessment of pipe lines using the Current Value Method is extremely complex, time consuming, and costly. The special 'linear' assessment rules provided for in section 25 of the *Act* have been legislated to avoid this cumbersome process and ensures that pipe line companies receive their assessments directly.<sup>42</sup> It also explains why the definition of a pipe line under the *Assessment Act* has a much broader meaning than the technical meanings provided in the definitions under the CSA Standard, and the *Oil, Gas and Salt Resources Act*.<sup>43</sup>

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<sup>40</sup> *Carsons' Camp Ltd. v. Municipal Property Assessment Corporation et al.* (2008), 88 O.R. (3d) 741 (C.A.) at paras. 13 and 26; *Assessment Act*, supra., ss. 1 ('current value'), 17, 25; MPAC Response to OEB Interrogatory 3b.

<sup>41</sup> MPAC Evidence – Affidavit of Ryan Ford, at para. 10, and Exhibit A.

<sup>42</sup> MPAC Response to OEB Interrogatory 1d.

<sup>43</sup> *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, s. 3(1).



[37.45.](#) For the purpose of determining the assessment of the Pipe Lines, it is only the definition under the *Assessment Act* that is relevant and authoritative in this context.<sup>44</sup>

**Issue 1: The Pipe Lines are Used for the  
(a) Transportation or (b) Transmission of Gas**

[38.46.](#) A “pipe line” means “a pipe line for the transportation or transmission of gas ...”. Lagasco, however, seems to have read the word “transportation” out of the definition and brings this application on the basis that its Pipe Lines are not transmission pipe lines (as that term is understood in the industry).

[39.47.](#) Section 25 of the *Act* indicates:

“pipe line” means a pipe line for the transportation or transmission of gas that is designated by the owner as a transmission pipe line and a pipe line for the transportation or transmission of oil, ... but does not include a pipe line or lines situate wholly within an oil refinery, oil storage depot, oil bulk plant or oil pipe line terminal.<sup>45</sup>

[40.48.](#) In determining whether the Pipe Lines are correctly assessed, this Board should have regard to the ordinary meaning of the terms “transportation” and “transmission”:

- a. “transportation” means “the action or process of transporting something; conveyance of people, goods, etc., from one place to another”; and

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<sup>44</sup> Tribute OEB Decision dated May 5, 2016, at p. 5.

<sup>45</sup> *Assessment Act*, R.S.O. 1990, c.A.31, s. 25.

- b. “transmission” means “conveyance or transfer from one person or place to another”<sup>46</sup>

41.49. Lagasco’s Pipe Lines transport or transmit gas:

- a. The gathering lines are “part of a natural gas gathering system” and “connect” the wells to a main gathering pipeline (paragraph 5 of Ms. Lowrie’s Affidavit);
- b. The main gathering Pipe Line “moves” the collected natural gas to a treatment facility (paragraph 5 of Ms. Lowrie’s Affidavit);
- c. The main gathering Pipe Line includes a compressor to enable the natural gas to be “transferred” and sold to the local utility company (paragraph 6 of Ms. Lowrie’s Affidavit);
- d. The purpose of the Pipe Lines is to collect the natural gas produced by the wells, and “take it to” the treatment facility (paragraph 7 of Ms. Lowrie’s Affidavit);
- e. The gathering Pipe Lines “gather” the gas from the wells and “move” the gas (paragraph 12 of Ms. Lowrie’s Affidavit);
- f. The gathering Pipe Lines serve the sole purpose of “gathering” oil and gas as it is removed from the wells and “transporting” it to the treatment facilities

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<sup>46</sup> Brown, Lesley (ed), The New Shorter Oxford English Dictionary. Vol. 2. Oxford: Clarendon Press, 1993, N-Z.

and ultimately to the Delivery Point (paragraphs 15 and 17 of Ms. Lowrie's Affidavit).<sup>47</sup>

[42-50](#). According to Lagasco, the Pipe Lines “connect”, “gather”, “move”, “take”, “transfer” and “transport” gas. Lagasco is clearly ‘transporting’ something, or ‘conveying goods from one person or place to another’. The Pipe Lines are therefore used for the “transportation or transmission” of gas as contemplated by section 25 of the *Act*.

*Issue 1a) “Gathering” pipelines are specifically included in the Regulation*

[43-51](#). Lagasco says its Pipe Lines are gathering pipe lines, not transmission pipe lines.<sup>48</sup> In addition to ignoring the word “transportation” in the definition under s. 25 of the *Act*, this position ignores the express provision of rates in the Regulation for “field gathering pipe lines”. If gathering pipe lines were not to be assessed using the Linear Method, there would be no reason to regulate the rates.<sup>49</sup>

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<sup>47</sup> Lagasco Inc. Application Record – Affidavit of Jane Lowrie at paras. 5, 6, 7, 12, 15 and 17.

<sup>48</sup> Lagasco Inc. Application Record – Affidavit of Jane Lowrie at para. 12.

<sup>49</sup> Sullivan, Ruth, Sullivan on the Construction of Statutes. 6th ed. Markham: LexisNexis, 2014, pp. 211-212.

[44.52.](#) Furthermore, Mr. Koller’s expert report, which is relied on by Lagasco in its entirety in this application, indicates as follows:

“Natural gas gathering pipelines are typically small diameter (up to eight inches) pipelines”<sup>50</sup> [...]

“Natural gas transmission pipelines are generally large diameter (six to 48 inches)” pipelines<sup>51</sup>.

[45.53.](#) Tables 1 (offshore) and 2 (plastic field gathering and plastic gas distribution) of the Regulation provide regulated rates for pipe lines ranging in diameter from 0.5 inches to 8 inches. Table 3 (other) provides regulated rates for pipe lines ranging in diameter from 0.75 inches to 48 inches.

[46.54.](#) If section 25 of the *Assessment Act* was only meant to capture larger diameter “transmission lines” (as that term is understood in the industry, and as Lagasco argues in this application), there would be no need for the Regulation to provide rates for smaller diameter pipe lines. It is clear that the rates are meant to include more than just what the industry refers to as “transmission” pipelines.

[47.55.](#) Lagasco’s position is contrary to the normal rules of statutory interpretation and disregards the legislative history. Prior to 1970, all transmission and transportation pipe lines were assessed using the linear method based on one set of rates set out in the *Act*. In 1970, the *Act* was amended to include three sets of rates for different types of pipe

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<sup>50</sup> Lagasco Inc. Application Record – Expert Report of Mr. Koller at para. 21.

<sup>51</sup> Lagasco Inc. Application Record – Expert Report of Mr. Koller at para. 33.

lines including “Field and Gathering Pipe Lines”.<sup>52</sup> The Legislature’s inclusion of “field and gathering pipe line” rates in the *Act* is to be interpreted broadly, in keeping with the purpose of the special assessment rates for pipe lines and not restricted to any technical definitions used elsewhere in the industry.<sup>53</sup>

[48-56.](#) Lagasco argues that “gathering pipelines” in the Regulation cannot mean “gathering pipelines” in the sense used in the industry because, it argues, gathering pipelines are used to “collect” oil and gas from wells and “deliver” it, “not simply” to transport oil and gas from point A to point B. This argument is predicated on a finding by the OEB that the Pipe Lines are not used for the “transportation” (or transmission) of gas.

[49-57.](#) If “gathering” doesn’t mean “gathering”, either in the ordinary sense of the word (i.e. to “collect” gas, which Lagasco describes as the function of its Pipe Lines) or as a technical term as used in the industry, its inclusion in the Regulation would be useless. This would be contrary to the rules of statutory interpretation which indicate that every word of a legislative provision is to be given meaning.<sup>54</sup>

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<sup>52</sup> Note: The rates were removed from the *Act* and moved to the Regulation in 1998 as part of a broad assessment reform.

<sup>53</sup> *Assessment Act*, R.S.O. 1960, c.23, ss. 41(4), and (5); *Assessment Act*, R.S.O. 1970. c.148, s. 33; Sullivan, Ruth, Sullivan on the Construction of Statutes. 6th ed. Markham: LexisNexis, 2014, at pp. 205 and 211-212.

<sup>54</sup> Sullivan, Ruth, Sullivan on the Construction of Statutes. 6th ed. Markham: LexisNexis, 2014, pp. 211-212.

~~50-58.~~ Similarly, if the Legislature only intended that transmission pipelines (as the industry uses that term) were to be caught under s. 25 of the *Act*, there would be no reason to include the word “transportation” in s. 25.

~~54-59.~~ Lagasco’s Pipe Lines are therefore used for the transportation or transmission of gas.

## **Issue 2: The Pipe Lines were Designated by the Owner**

~~52-60.~~ MPAC’s standard procedure, when advised by owners that they have installed new pipelines, is to confirm the location, type, pipe diameter and length, and year installed. The designation and reporting of new pipe lines under s. 25 occurs simultaneously.<sup>55</sup> Once this information has been confirmed, MPAC adds the new pipeline to the assessment roll for the municipality. On receiving that information, the pipeline would be assessed on the next assessment roll. As discussed above, the first Pipe Line on Exhibit A of Ms. Lowrie’s Affidavit, filed on behalf of Lagasco, was installed in 1981. MPAC would have received this information from the pipe line company likely in 1981. On receiving the information, the Pipe Line would have been assessed on the next assessment roll (for taxation in 1982).<sup>56</sup>

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<sup>55</sup> MPAC Response to OEB Interrogatory 3a.

<sup>56</sup> MPAC Evidence – Affidavit of Ryan Ford, at para. 9.

Note: The assessment roll for each municipality is returned in December of each year for taxation in the following year. For example, the assessment rolls used by municipalities

[53-61.](#) MPAC states that the Pipelines have been assessed since they were designated by their then owners. As can be seen in Exhibit A to Mr. Ford's Affidavit, filed on behalf of MPAC, the majority of the Pipe Lines were installed between 1957 and 2000. Therefore, the initial reporting to MPAC of some of these Pipe Lines date back the late 1950s, and the Pipe Lines have been assessed pursuant to section 25 of the *Act* (or its predecessors) since they were installed.

[54-62.](#) Pursuant to section 31 of the *Act*, MPAC is required to deliver notices of assessment to assessed persons, including Lagasco and its predecessors whenever information on the assessment roll changes. Approximately 97% of the Pipe Lines included in Exhibit A to Mr. Ford's Affidavit were installed between 1957 and 2006. The remaining pipelines were installed between 2008 and 2013.<sup>57</sup> With respect to the Pipe Lines that predate 2006, the four most recent notices delivered for the Pipelines were:

- a. On the re-assessment for 2006, or on the initial assessment of the pipelines in 2006 or 2007 depending on the date of installation;
- b. On the re-assessment for 2009;
- c. On the re-assessment for 2013; and
- d. On the re-assessment for 2017.

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to calculate the taxes in 2020 was returned (delivered) to each municipality in December of 2019.

<sup>57</sup> MPAC Evidence – Affidavit of Ryan Ford, Exhibit A.

[55-63.](#) With respect to the Pipe Lines installed from 2008 to 2013, notices were delivered in each municipality at a minimum of on the initial assessment of the Pipe Line and on the re-assessment for 2017. Some of those Pipe Lines would also have received notices on the re-assessments for 2009 and 2013 depending on their date of installation.

[56-64.](#) The Notices of Assessment would clearly indicate that the land is being assessed as a “pipe line”.<sup>58</sup>

[57-65.](#) There is no evidence that Dundee objected to the assessment of the Pipe Lines prior to the 2015 taxation year. The assessments of the Pipe Lines for taxation from the date of the creation of the roll numbers through to 2015 are deemed to be correct.<sup>59</sup>

[58-66.](#) The *Act* requires pipe line companies to notify MPAC every year concerning the age, length, and diameter of their pipe lines.<sup>60</sup>

[59-67.](#) The *Act* also requires pipe line companies to ‘designate’ their pipe lines. However, unlike the requirement to report details annually, once a pipe line is designated, the designation continues until the pipe line is abandoned. Even pipe lines that cease to be used continue to be assessed as designated pipe lines.<sup>61</sup>

[60-68.](#) If the Legislature intended that pipe lines be designated periodically, it would have included this requirement with the other information required to be provided annually to

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<sup>58</sup> *Assessment Act*, R.S.O. 1990, c.A.31, at ss. 19.2, 31.

<sup>59</sup> *Assessment Act*, R.S.O. 1990, c.A.31, at s. 41.

<sup>60</sup> *Assessment Act*, R.S.O. 1990, c.A.31, at s. 25(2).

<sup>61</sup> *Assessment Act*, R.S.O. 1990, c.A.31, at ss. 25(1), (3), (8) and (9).



MPAC. It also would not have been necessary to provide for the assessment of pipe lines no longer being used or abandoned.<sup>62</sup>

[61-69](#). Although MPAC is unable to produce the original designation of the Pipe Lines, this Board can accept that the Pipe Lines were so designated and were correctly assessed pursuant to section 25 of the *Act* because:

- a. There was no challenge to the assessment of the Pipe Lines until Dundee filed appeals to the Assessment Review Board in 2015.
- b. The assessment rolls (as applicable, depending on the year of installation) up to 2012 are deemed to be correct and binding.
- c. Once the first assessment post-designation was made and not appealed, there was no need for MPAC to retain the designation in its files. Once Notices of Assessment are delivered, it is the responsibility of the assessed person to raise issues with respect to the assessments. If no issues are raised, the returned assessment is deemed to be correct, valid and binding even if there are errors. So, once any assessment is finally determined – i.e. once the assessment is returned and any appeals are resolved – the assessment is binding and cannot be challenged. Once an assessment is

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<sup>62</sup> Sullivan, Ruth, Sullivan on the Construction of Statutes. 6th ed. Markham: LexisNexis, 2014, at p. 208 and pp. 223-224

final and not subject to challenge, the need to retain supporting documents is reduced.<sup>63</sup>

- d. MPAC would have no way of knowing the location, age, length or diameter of the Pipe Lines unless that information was provided by the pipe line company under s.25 of the *Act*: the assessment confirms the designation.<sup>64</sup>

### **Tribute Resources Decision**

[62-70](#). As discussed above, the OEB has previously determined that gathering pipe lines are used for the “transportation” of gas in the ordinary meaning of that word, as gathering pipe lines are used to move or transport gas from one location to another, and they are therefore subject to assessment under s. 25 of the *Act*.<sup>65</sup> The OEB’s decision on this issue was subsequently upheld on appeal to the Divisional Court.<sup>66</sup>

[63-71](#). The OEB also held in the Tribute Decision that language in section 25(1) of the *Assessment Act* is clear and unambiguous, in that in order for the pipeline to qualify, the pipeline in question must be used for the transportation or transmission of gas.<sup>67</sup>

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<sup>63</sup> MPAC Response to OEB Interrogatory 3e; *Assessment Act*, R.S.O. 1990, c.A.31, at s. 41.

<sup>64</sup> MPAC Response to OEB Interrogatory 3f.

<sup>65</sup> Tribute Resources Inc. OEB Decision dated May 5, 2016, at p.6

<sup>66</sup> *Tribute Resources Inc. v. Ontario Energy Board*, 2018 ONSC 265 (Div. Ct.)

<sup>67</sup> Tribute Resources Inc. OEB Decision dated May 5, 2016, at p.6

[64.72.](#) The OEB also held that it was also evident from the regulations classifying pipelines of different types that the general term “pipe line” includes gathering lines as well as transportation and transmission lines as those terms might be used or defined elsewhere.<sup>68</sup>

[65.73.](#) Finally, the OEB found that MPAC had provided sufficient evidence to determine that the pipe lines were designated by the owner as transmission pipelines as required under section 25(2) of the *Assessment Act*.<sup>69</sup>

[66.74.](#) The application made by Tribute Resources Inc. and the application made by Lagasco for a determination as to whether their gathering lines should be assessed pursuant to s.25 of the *Act* are almost identical. Their description of the characteristics and functions of their respective pipe lines are indistinguishable, and they both refer to the same technical definitions in support of their argument. Although Lagasco claims that there is new evidence in the form of an expert report and evidence of “market turmoil”<sup>70</sup> since the Tribute Decision, neither assists the OEB in a determination based on a question of statutory interpretation. Mr. Koller’s report is simply a description of the economic and functional differences between gathering pipe lines and transmission pipelines (as those terms are understood in the industry), but does not offer new evidence to the OEB which would alter the Board’s determination of whether the Pipe Lines “transport” or “transmit” gas in accordance with s. 25 of the *Act*. The “fresh evidence”

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<sup>68</sup> Tribute Resources Inc. OEB Decision dated May 5, 2016, at p. 6

<sup>69</sup> Tribute Resources Inc. OEB Decision dated May 5, 2016, at p. 7.

<sup>70</sup> Lagasco Response to OEB Interrogatory 2c.

Lagasco refers to is not relevant or helpful to the determination to be made. In essence, Lagasco is asking the OEB to give a different answer to the same question, on essentially identical facts, that it did in the Tribute OEB Decision.

**Additional Issue: Date of Declaratory Relief**

[67-75](#). The application seeks a declaration that the Pipe Lines were not “pipe lines” within the meaning of section 25 of the *Act* at any time “on or after January 1, 2015”.<sup>71</sup> It is not clear what interest Lagasco has, if any, in the Pipe Lines prior to its purchase on November 16, 2018.

[68-76](#). Any relief, if granted, should be limited to 2019 forward, when Lagasco had an interest in the Pipe Lines.<sup>72</sup>

**Additional Issue: Is Lagasco challenging the Validity of the Regulation?**

[69-77](#). In its submissions, Lagasco states that the inclusion of “gathering pipe lines” in section 41 and Table 2 of the Regulation creates an apparent conflict with the terminology

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<sup>71</sup> Lagasco Inc. Application Record – Application at para.1.

<sup>72</sup> Note: The assessment roll is returned annually, so the next roll after the purchase would be 2019.

used in s. 25 of the *Act*, and that the Regulation does not have the capacity to expand the definition of “pipe line” under the *Act*.<sup>73</sup>

~~70-78.~~ If Lagasco is asserting that Table 2 of the Regulation is *ultra vires*, this issue should have been raised in the Application or, more appropriately, should have been made the subject matter of an application for judicial review.

~~71-79.~~ Furthermore, the legality of the Regulation is not in issue as no notice to the Crown has been given.

~~72-80.~~ If this Board intends to consider the validity of the Regulation, MPAC reserves its rights to reply to any submissions on this issue made by Lagasco.<sup>74</sup>

## Summary

~~73-81.~~ For the reasons set out above, MPAC submits that the Pipe Lines are correctly classified as “pipe lines” pursuant to s. 25 of the *Act*, as they transport or transmit gas.

## PART IV – RELIEF REQUESTED

~~74-82.~~ MPAC requests the right to reply to any further submissions made by Lagasco in this Application.

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<sup>73</sup> Lagasco written submissions at paras. 32-39

<sup>74</sup> *Judicial Review Procedures Act*, R.S.O. 1990, c. J1, s. 2(1).

75-83. MPAC requests that Lagasco's application be dismissed.

All of which is respectfully submitted this ~~20<sup>th</sup> day of October, 2020~~ 18<sup>th</sup> day of February, 2021.

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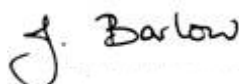
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**SCHEDULE “A” – LIST OF AUTHORITIES**

1. *Yonge Street Hotels Ltd. v. Municipal Property Assessment Corp.*, Region No. 9, 2005 CanLII 14438 (ON CA)
2. *Corporation Notre-Dame de Bonsecours v. Communauté urbaine de Québec et al.*, [1994] 3 S.C.R. 3.
3. *Scott et al. v. Municipal Property Assessment Corporation, et al.* (12 February 2015), (Ont.A.R.B.) [unreported]; [2015] O.A.R.B.D. No. 64.
4. *1518756 Ontario Inc., et al. v. Municipal Property Assessment Corporation, et al.* (2008) 88 O.R. (3d) 211 (Ont.S.C.J.); *aff’d* (2009), 248 O.A.C. 114 (Ont.Div.Ct.); [2009] O.J. No. 1119; *leave ref’d* (3 July 2009), (Ont.C.A.) [unreported].
5. *Carsons’ Camp Ltd. v. Municipal Property Assessment Corporation et al.* (2008), 88 O.R. (3d) 741 (C.A.).
6. *Re Marley & Sandwich*, [1932] O.W.N. 178 (C.A.)
7. Brown, Lesley (ed), *The New Shorter Oxford English Dictionary*. Vol. 2. Oxford: Clarendon Press, 1993.
8. Sullivan, Ruth, *Sullivan on the Construction of Statutes*. 6th ed. Markham: LexisNexis, 2014, pp. 205, 211-212.

## **SCHEDULE “B” – LEGISLATIVE PROVISIONS**

1. *Assessment Act*, R.S.O. 1990, c. A.31
  - a. O. Reg. 282/98: General
2. *Assessment Act*, R.S.O. 1960, c.23
3. *Assessment Act*, R.S.O. 1970, c.148
4. *Municipal Act, 2001*, S.O. 2001, c.25, as amended
5. *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1