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BY EMAIL

February 18, 2021

Ms. Christine E. Long
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Long:

**Re: Lagasco Inc.
Pipeline Classification Application
OEB Staff Supplemental Submission
Ontario Energy Board File Number: EB-2019-0166**

In accordance with Procedural Order No. 7 please find attached the OEB staff supplemental submissions for the above proceeding. This document has been sent to Lagasco Inc. and to all other registered parties to this proceeding.

Lagasco Inc. is reminded that its supplemental reply submission is due by February 25, 2021.

Yours truly,

Ritchie Murray
Project Advisor, Natural Gas Applications

c. Applicant and intervenors

Encl.



OEB Staff Supplemental Submission

Pipeline Classification Application

Lagasco Inc.

EB-2019-0166

February 18, 2021

1 INTRODUCTION

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 (Lagasco Pipelines) are not "pipe lines" within the meaning of section 25(1) 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.

Following the filing of additional evidence by the Municipal Property Assessment Corporation (MPAC) and an interrogatory process, intervenors and OEB staff filed their initial final submissions in this matter on October 20, 2020. The OEB determined that it would be assisted by supplemental oral arguments, which were made at a transcribed videoconference on December 2, 2020.

On December 30, 2020, the Ontario Petroleum Institute (OPI, which is an intervenor in the proceeding) sought permission from the OEB to file supplemental affidavit evidence. OPI stated that the new evidence would demonstrate that MPAC had in some cases assessed pipelines for taxation purposes despite the fact that the owner had never designated those pipelines pursuant to the Assessment Act. The OEB granted this request and allowed MPAC to file responding evidence. The OEB also made provision for interrogatories on the new evidence: MPAC filed its responses to interrogatories on February 11, 2021, and OPI filed its responses to interrogatories on February 16, 2021. The OEB allowed parties to file supplemental final argument, though only as it relates to the new OPI and MPAC evidence. These are the supplemental submissions of OEB staff.

1.1 The issue before the OEB

There is only one issue in this proceeding: are the Lagasco Pipelines "pipe lines" within the meaning section 25 of the Assessment Act. Section 25(1) of the Assessment Act establishes two conditions for a natural gas pipeline to be considered a "pipe line": 1) the pipeline is used for the transportation or transmission of gas, and 2) the pipeline was designated by the owner as a transmission pipeline.

OPI's evidence does not change OEB staff's submission as presented in its written submissions of October 20, 2020 and its oral submissions on December 2, 2020. OEB staff maintains its position that the Lagasco Pipelines are "pipe lines" within the meaning of section 25(1) of the Assessment Act.

1.2 The new OPI and MPAC evidence

The OPI evidence does not relate in any way to the first condition in section 25(1) of the Assessment Act: that the pipeline is used for the transportation or transmission of gas. OEB staff continues to rely on its previous submissions with respect to this condition.

The aim of the OPI evidence appears to be to address the second condition: the designation of the pipeline by its owner as a transmission pipeline. The OPI evidence is an affidavit from Mr. Jim McIntosh, who is the Chairman of the Board of Directors of OPI. Mr. McIntosh has worked as an employee and consultant for TAQA North Ltd. (TAQA), an oil and natural gas exploration and production company, since 2009. TAQA purchased two natural gas and oil producing properties in Ontario (the Innerkip Facilities and the Rodney Facilities, or collectively the TAQA Properties) in 2009. It is not clear if TAQA still owns these properties. Mr. McIntosh was familiar with the interactions between MPAC and TAQA with respect to the TAQA Properties. Mr. McIntosh also worked for the company that owned the Innerkip Facilities from 1992 through 2000.¹

Mr. McIntosh states that MPAC was aware of TAQA's (and its predecessor companies') gathering pipelines and assigned taxation roll numbers for each associated municipality. However, Mr. McIntosh states that neither TAQA nor its predecessor companies ever designated their pipelines under section 25 of the Assessment Act, nor did they provide MPAC with documentation listing pipeline sizes, distances, material of construction, or year of construction.²

Mr. McIntosh states that TAQA and its predecessor companies assumed that MPAC instead obtained the relevant information about the TAQA gathering pipelines from separate reporting that TAQA and its predecessor companies provided to the Ministry of Natural Resources and Forestry (MNRF). Mr. McIntosh states that, in his experience, MPAC did not require a pipeline designation by the owner before assessing them for taxation.³

MPAC filed a responding affidavit sworn by Mr. Ryan Ford, who is the manager of linear properties for MPAC. Mr. Ford states that in his time working as a pipeline analyst (2012-2014) and in his current position (2014-present), he never received any pipeline information from MNRF, nor has he seen pipeline maps from MNRF in any of the file documentation that he reviewed for the purposes of the current proceeding before the OEB or in his review of any other pipeline assessment matters over the course of the last 9 years. In an interrogatory response MPAC stated that the pipelines on the TAQA Properties were added to the assessment rolls in 1993 and 1998, which likely means

¹ Affidavit of Jim McIntosh dated December 20, 2020 (McIntosh Affidavit), paras. 3-4

² McIntosh Affidavit, para. 4 and para. 9

³ McIntosh Affidavit, para. 9 and para. 11

that they were installed and designated in 1992 and 1997. Appeals were filed with the Assessment Review Board (ARB) with respect to both assessments in 1998 through 2000; however, these appeals were subsequently withdrawn by the end of 2000.⁴

MPAC also confirms that any records associated with the designation of the TAQA properties have been destroyed in accordance with MPAC's document retention policy. MPAC further confirms that once an appeal is withdrawn, the rolls are deemed to be correct and there is no need for MPAC to retain designation documentation in its files. This also applies where no appeal is filed of the first post-designation assessment at all, in which case the assessment is also deemed to be correct.⁵

⁴ MPAC response to OEB staff interrogatory 1(b)

⁵ MPAC response to OEB staff interrogatory 1(c)

2 SUBMISSIONS

The new evidence filed by OPI and MPAC has not changed OEB staff's view with respect to the question of whether the Lagasco Pipelines were designated under section 25(1) of the Assessment Act. As a starting point, it should be observed that the application before the OEB relates only to the Lagasco Pipelines. None of the evidence filed by OPI speaks directly to the designation of the Lagasco Pipelines. Although TAQA and Lagasco both have pipelines that have been assessed by MPAC, the circumstances related to any TAQA designation of its pipelines is not dispositive of the question of the designation of the Lagasco Pipelines – they are different companies operating different pipeline networks. Even if the OEB were to accept that TAQA did not or may not have designated its pipelines (which is not an issue before the OEB in this proceeding, nor is TAQA a party to it), this would not mean that Lagasco or its predecessor companies did not designate the Lagasco Pipelines. Although OEB staff does not doubt that Mr. McIntosh's evidence is accurate to the best of his knowledge, he may not have had knowledge of all communications between TAQA (and its predecessors) and MPAC over the relevant time frame. OEB staff also notes TAQA's assessment appeals to the ARB were withdrawn in 2000 and none appear to have been filed since that time. As MPAC noted in its initial argument in chief and in its interrogatory responses, once any appeals of an assessment are withdrawn (or if they are not challenged in the first place), they are deemed to be correct and binding pursuant to section 41 of the Assessment Act.⁶

In OEB staff's view, the new OPI and MPAC evidence is not such as to impact the OEB's assessment of whether the Lagasco Pipelines are "pipe lines" within the meaning of section 25 of the Assessment Act. OEB staff maintains its position that the answer to that question is "yes". As stipulated by the OEB in Procedural Order No. 7, this submission addresses only the new evidence filed by OPI and MPAC, and the associated interrogatory responses. OEB staff will therefore not repeat its previously filed submissions here; however, it continues to rely on those submissions.

All of which is respectfully submitted.

⁶ MPAC argument in chief filed October 20, 2020, paras. 21 and 61. MPAC response to OEB staff interrogatory 1(d).