



DECISION AND ORDER

EB-2019-0166

LAGASCO INC.

**Application with respect to the Classification of Certain Natural
Gas Pipelines under the *Assessment Act***

BEFORE: **Susan Frank**
 Presiding Commissioner

Robert Dodds
Commissioner

Michael Janigan
Commissioner

April 15, 2021



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1 INTRODUCTION AND SUMMARY

Lagasco Inc. (Lagasco) filed an application requesting an order determining that its natural gas pipe lines in Haldimand County (Pipelines) are not “pipe lines” within the meaning of section 25(1) of the *Assessment Act, R.S.O. 1990* (Assessment Act)¹, and were not “pipe lines” within the meaning of the Assessment Act at any time on or after January 1, 2015² (Application).

The Application is triggered by a dispute between Lagasco and the Municipal Property Assessment Corporation (MPAC) with respect to whether or not the Pipelines are “pipe lines” as defined in the Assessment Act. Lagasco asserts that the Pipelines are natural gas production “gathering lines” and not subject to municipal taxes as “pipe lines” under the Assessment Act. MPAC maintains that the Pipelines are appropriately assessed as “pipe lines” for the purposes of municipal taxation.

Lagasco is a corporation under the laws of the Province of Ontario and is in the oil and gas production business. Lagasco is not an OEB rate regulated natural gas distribution company. Lagasco does not possess a certificate of public convenience and necessity nor does it hold any municipal franchise agreements issued by the OEB. Lagasco does not hold a gas distributor license from the Technical Standards and Safety Authority (TSSA).

MPAC is responsible for the assessment of all real property in Ontario, including pipe lines as defined by the Assessment Act. MPAC’s assessment is used by municipalities to determine the value upon which the tax rates are applied and collected.

For the purposes of natural gas service, section 25 (1) of the Assessment Act defines a “pipe line” as “a pipe line for the transportation or transmission of gas that is designated by the owner as a transmission pipe line”.

Section 25 (3) of the Assessment Act provides that where there is a dispute as to whether a gas pipe line is a transmission pipe line, on the application of any interested party, the OEB shall decide the matter and its decision is final. In accordance with its authority pursuant to section 25 (3) of the Assessment Act, the OEB finds that the evidence does not demonstrate that the Pipelines are “pipe lines” within the meaning of section 25 (1) of the Assessment Act.

¹ Assessment Act, R.S.O. 1990, cA31 as amended

² For clarity, “pipeline” and “pipe line” are alternative spellings for pipe line.

2 THE PROCESS

Lagasco filed the Application on June 7, 2019. The Application contained no pre-filed evidence. The OEB deemed the Application incomplete and placed it in abeyance on July 26, 2019. Lagasco provided its pre-filed evidence on May 25, 2020. The Application was taken out of abeyance by the OEB on June 9, 2020.

A Notice of Hearing was issued on June 22, 2020. 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 (Municipalities) applied for intervenor status. Lagasco did not file any objections to the intervention requests.

Procedural Order No. 1 was issued on July 17, 2020. MPAC, OPI and the Municipalities were granted intervenor status³. 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.

MPAC filed written evidence on July 30, 2020.

Procedural Order No. 2 was issued on August 10, 2020. The OEB found that it would be assisted in its decision by providing for intervenor evidence in this proceeding. Except for interrogatory responses from the applicant, 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.

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 scheduled a transcribed videoconference for November 24, 2020. Due to MPAC's unavailability, the oral arguments were rescheduled to 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), which it submitted

³ None of the intervenors requested to be eligible for an award of costs.

demonstrates that “MPAC will assess the pipe line for taxation despite the fact that the owner has never provided any information about the pipe lines to MPAC, or submitted a designation that they are “pipe lines” under section 25 of the Ontario *Assessment Act*.”

Following submissions opposing the admission of the OPI evidence from MPAC and the Municipalities, and Reply Responses from Lagasco and OPI, Procedural Order No. 6 was issued on January 18, 2021 in which the OEB allowed the OPI Evidence onto the record in this proceeding, finding that it might be consequential to the determination of an important issue in this proceeding,

Procedural Order No. 7 was issued on January 27, 2021 following MPAC’s request to file a response to the OPI Evidence. The OEB allowed the MPAC Evidence onto the record in this proceeding. Procedural Order No. 7 set a procedural schedule for written interrogatories on the MPAC Evidence, interrogatory responses from OPI and MPAC, revised submissions, and a revised reply submission.

MPAC and OEB staff filed supplemental submissions on February 18, 2021. The Municipalities submitted an email on February 19, 2021, stating that they had no changes to make to their previously filed written submissions and oral arguments.

On February 24, 2021, OPI filed a letter requesting that MPAC be directed to file further and better responses to two of OPI’s interrogatories. The OEB denied the OPI request for better responses as the additional information requested is not directly relevant to this decision.

Lagasco filed its supplemental reply submission on February 26, 2021.

3 ARE LAGASCO'S PIPELINES TRANSMISSION PIPE LINES UNDER THE ASSESSMENT ACT?

There is essentially only one issue in this proceeding: are the Pipelines properly classified as “pipe lines” within the meaning of section 25 (1) of the Assessment Act? With respect to natural gas, the Assessment Act defines a pipe line as “a pipe for the transportation or transmission of gas that has been designated by the owner as a transmission pipe line”. There are therefore two conditions for a natural gas pipe line to meet the definition of “pipe line” in the Assessment Act: 1) the pipe line is used for the transportation or transmission of gas, and 2) the pipe line was designated by the owner as a transmission pipe line.

3.1 Transportation or Transmission of Gas

Position of Lagasco

Lagasco's Pipelines are part of a natural gas gathering system used in the private gathering and production of natural gas. The overall gathering system includes a network of smaller gathering lines that transport natural gas from the production wells to a larger gathering line, which in turn transports the natural gas to Lagasco's treatment facility. At the treatment facility, the natural gas is cleaned and conditioned to meet the local natural gas utility's quality standards, then is transported by pipe line from the treatment facility to a metering site where it is sold to the local natural gas distribution utility.

Lagasco's Pipelines are assessed as transmission pipe lines by MPAC pursuant to section 25 (1) of the Assessment Act. Lagasco claims that MPAC's assessments produce an “enormous and unjust disparity” between the economic value of the Pipelines and the assessed value.

Lagasco presented evidence and submissions to support its position that its Pipelines were “gathering” pipe lines and not transmission pipe lines. In support of its position, Lagasco argued for the following findings:

- a) The Pipelines are gathering pipe lines that are distinguished from transmission pipe lines in both the CSA standard for oil and gas pipe lines adopted by regulation under the TSSA, and the Oil and Gas Resources Act. The function, lifespan and value of the two types of pipe lines are significantly different, and the definition of pipe lines in the Assessment Act intentionally excludes gathering pipe lines.

- b) The interpretation of section 25 (1) must be consistent, predictable, and fair. The OEB must consider the entire context of the Assessment Act and avoid an interpretation that produces absurd results or consequences that are incompatible with the object of the Assessment Act. The interpretation of Lagasco's Pipelines as transmission pipe lines produces consequential tax assessments that prevent the financially viable operation of Lagasco's business.
- c) The objectives of the OEB set out in the OEB Act commend an interpretation that is supportive of the successful operation of the gas production industry. In particular, the objective "to facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas"⁴ is applicable. Lagasco argued that a "regulatory adjustment" is required to allow for the Ontario oil and gas industry to remain sustainable and to enable it to responsibly continue to meet its environmental obligations with respect to such things as well abandonment.

Lagasco submitted that the OEB's Tribute Resources Inc. (Tribute) decision⁵ (discussed below) should not govern the result of this proceeding. As an administrative tribunal, the OEB is not bound by its previous decisions. As well, Lagasco noted that this was a different case, commenced by a different applicant concerning different pipe lines, and was being argued based on different evidence. Lagasco submitted that the Divisional Court's upholding of the OEB Tribute decision on appeal⁶ was based on a principle of deference to the hearing tribunal rather than a determination of the correct interpretation of the Assessment Act.

Position of MPAC

MPAC submitted that the Pipelines are correctly classified as "pipe lines" pursuant to section 25 of the Assessment Act because they "move", "transfer", "take", and "deliver" gas, and are used for "transporting" gas⁷. Therefore they "transport gas" as described in the Assessment Act.

MPAC submitted the OEB's jurisdiction in the current application is limited to making a determination as to whether the Pipelines are "pipe lines" to be assessed pursuant to section 25 (1) of the Assessment Act. MPAC submitted that the OEB is bound to apply the statute as it is written, regardless of any perceived notions of unfairness on the part

⁴ Ontario Energy Board Act, S.O. Chapter 15, Schedule B sec. 2

⁵ Tribute Resources Inc. EB-2015-0206

⁶ Tribute Resources Inc. v. Ontario (Energy Board) [2018]O.J. No. 324

⁷ Application, Affidavit of Jane Lowrie at paragraphs 5, 6, 7, 12, 15 and 17

of the taxpayer. In particular, the OEB cannot determine the valuation for tax purposes of any pipe line or whether the prescribed valuation is unjust.

MPAC noted that if pipe lines are not subject to assessment under section 25 (1) of the Assessment Act then alternative assessment rules will apply. Instead, the assessment will be to the owners of the parcels under or over which the pipe lines are located, not to Lagasco.

MPAC submitted that the applications to the OEB made by Tribute and Lagasco are almost identical, and the same result should be reached. MPAC submitted that the Lagasco evidence is simply a description of the economic and functional differences between gathering pipe lines and transmission pipe lines (as those terms are understood in the industry), but does not offer new evidence to the OEB which should alter the OEB's determination of whether the Pipelines "transport" or "transmit" gas in accordance with section 25 of the Assessment Act.

Position of the Municipalities

The Municipalities submitted that, even accepting Lagasco's position that the word "transmission" may have a technical or industry meaning in relation to natural gas, Lagasco's reliance on those meanings is not supported by the words used in section 25 (1) of the Assessment Act. Specifically, section 25 (1) is not limited in its application to pipe lines that are "transmission" pipe lines in that technical or industry sense. Rather, the term "pipe line" for the purposes of section 25 (1) is expressly defined more broadly to mean a pipe line "for the transportation or transmission of gas". The word "or" in this context clearly indicates that the Legislature intended the definition to include more than just "transmission" pipe lines in any narrow industry sense. The Municipalities submitted that the "transportation" of gas, in the ordinary meaning of that word, is broad enough to include "gathering" lines such as the Pipelines because they are used to transport gas from one location to another.

The Municipalities further noted that the Divisional Court decision in the appeal of the OEB's decision in the Tribute case found that the OEB's decision not to apply "the technical meaning and understanding of the words [of section 25 (1)] as they are used in the oil and gas industry", but rather "to apply the common and ordinary meaning" of those words, was "consistent with the rules of statutory interpretation"⁸. The Municipalities also submitted that the OEB's jurisdiction is precisely defined in section 25 (3) of the Assessment Act. As a consequence, the Municipalities submitted that the

⁸ Tribute Resources Inc. v. Ontario Energy Board, 2018 ONSC 265 (Divisional Court Decision), paragraph 52

OEB must recognize that it does not have a role in deciding how the value of any pipe line should be assessed for municipal property tax purposes, nor in deciding what rate of tax should be applied to that assessed value. The Municipalities submitted that the economic impacts of section 25 (1) of the Assessment Act are not relevant to the OEB's role.

Position of OPI

OPI stated that the assessment of gathering pipe lines by MPAC has concerned Ontario gas producers for many years, and its members are closely following this proceeding⁹. OPI stated that many Ontario producers have appealed and challenged their assessments, and that several companies have failed due to their inability to obtain "fair municipal taxation based on realistic and accurate valuations". OPI submitted that, "[t]he Assessment Act needs ultimately to be amended to recognize the fair market value of our facilities and gathering pipe lines as their value declines in accordance with the declines in associated production."

Position of OEB Staff

OEB staff noted that municipal tax rates paid by Lagasco (or individual property owners) are a matter of taxation policy and are set primarily by regulations under the Assessment Act and administered by MPAC. The OEB's only role is to determine if the Pipelines are "pipe lines" within the meaning of the Assessment Act.

OEB staff submitted that the OEB considered a nearly identical issue in the Tribute case, where the OEB decided that the Tribute pipe lines were used for the transportation of gas within the ordinary meaning of that word, as the Tribute pipe lines (like the Pipelines) were used to transport gas from one location to another.

Findings - Transportation and Transmission of Gas

The OEB finds that Lagasco's Pipelines are used for transportation and transmission of gas and satisfy the first condition for classification as transmission pipe lines pursuant to section 25 (1) of the Assessment Act.

The OEB is guided by the principles of statutory interpretation that have been set out in governing judicial precedents. The words of a statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of the enacting legislative body¹⁰. The

⁹ Filed November 23, 2020

¹⁰ *Capcorp Planning (2003) Inc. v. Ontario (Finance)* 2019 ONCA 406 at para 41, also *Agraira v. Canada (Public Safety and Emergency Preparedness)* [2013] 2 S.C.R. 559 at para 64

OEB also finds that the Assessment Act, as a taxing statute, must be interpreted in accordance with this guidance provided by the Capcorp decision¹¹:

Where the words of a tax statute are precise and unequivocal, the ordinary meaning of the words predominates in the interpretive process.

The OEB agrees with Lagasco that the Pipelines are gathering pipe lines that are distinguished from transmission pipe lines within the language of both the CSA Z662-15 and the Oil and Gas Resources Act. However, this is a proceeding under the Assessment Act, and the relevant language of the Assessment Act must govern their classification. This language must first be read to ascertain what interpretation can be derived from the plain meaning of the words.

Section 25 (1) of the Assessment Act defines a pipe line as “a pipe line for the transmission or transportation of gas”. Clearly, while gathering pipe lines may differ in purpose and operation from pipe lines used exclusively for transmission and distribution, they do transport gas. It is not possible to ignore the presence of “transportation” in the definition in an attempt to exclude it using definitions in other codes and legislation.

The OEB also notes that the legislation does specifically exclude other types of pipe lines that might transport gas, namely those within specified facilities from the pipe line classification, but did not provide the same exclusion for gathering pipe lines.

The interpretation urged by Lagasco is also problematic because of its lack of coherence with O. Reg 282/98. This regulation to the Assessment Act provides for the taxation of pipe lines classified by section 25 (1) based on an assessed value determined pursuant to Part VIII of the regulation and a rate calculated using the pipe line categories set out in Part X of the regulation. The method of assessment and the rates are given specifically for gathering pipe lines in the relevant parts of the Regulation:

41. (1) For the 2017, 2018, 2019 and 2020 taxation years, the assessed value of a pipe line shall be determined as follows:

1. The length of the pipe line in feet shall be multiplied by the applicable rate in Table 1, 2 or 3 of Part X. Table 1 applies to offshore pipe lines. Table 2 applies to plastic field gathering pipe lines and plastic distribution pipe lines. Table 3 applies to other pipe lines.

¹¹ Ibid, at para 44

2. The amount determined under paragraph 1 shall be depreciated by reducing the amount by the applicable percentage in Table 4 for offshore pipe lines and in Table 5 for plastic field gathering pipe lines, plastic gas distribution pipe lines and other pipe lines.

If gathering pipe lines are not transmission pipe lines within the meaning of section 25 (1) of the Assessment Act, it is difficult to explain why their methods of assessment of value and rates are provided under the related sections of the regulation.

Lagasco urged that the result of the classification of its gathering Pipelines as transmission pipe lines within the meaning of section 25(1) of the Assessment Act and subject to the taxation assessment required by O. Reg 292 is illogical and oppressive. According to Lagasco, this results in its Pipelines being assessed at 52-fold their economic value. While the OEB understands the concerns expressed by Lagasco, the OEB cannot depart from the requisite principles of statutory interpretation to fashion a result that Lagasco argues would be more equitable.

As the Supreme Court of Canada has noted, “No principle of statutory interpretation requires that a plain meaning of a provision be contorted to make its scheme more coherent.”¹²

Finally, it is argued by Lagasco that the OEB must interpret section 25 (1) of the Assessment Act in keeping with the OEB’s own statutory objective “to facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas”. While acknowledging that the ongoing financial concerns of Lagasco that may threaten its ability to carry on business, the OEB notes that gas production is not one of the gas industry operations set out in the referenced section to which the OEB’s objective of maintenance of financial viability applies. But of greater significance in determining the OEB’s interpretative task, is the principle that where the legislation provides for an outcome that is plain and straightforward in its wording, the statutory objectives of an administrative tribunal or agency should not be used to override that result.

In the *Tribute Resources Inc.* decision¹³, the OEB dealt with a very similar case involving the interpretation of section 25 (1) of the Assessment Act. With respect to the question of whether the pipe lines were used to for the transmission or transportation of gas, the OEB reached the same conclusion as decided in this proceeding. Despite the fact that *Tribute Resources Inc.*’s pipe lines were gathering pipe lines, the OEB found

¹² *Orphan Wells Association v. Grant Thornton Ltd.*, 1 S.C.R. 150 (2019) para 101

¹³ *Tribute Resources Inc.* EB-2015-0206

that the term “transportation” of gas must be given its ordinary clear and unambiguous meaning. As a result, gathering pipe lines qualified as pipe lines under section 25 (1). The OEB’s decision was sustained on appeal to the Divisional Court¹⁴.

3.2 Pipeline Designation by Owner

Position of Lagasco

Lagasco stated that during the relevant taxation years, neither Lagasco nor Dundee Energy Limited Partnership and its general partner Dundee Oil and Gas Limited (Dundee; the company that owned many of the Pipelines before Lagasco) made a designation under section 25 (1) of the Assessment Act identifying the Pipelines as “transmission pipe lines”. Lagasco had no direct evidence that the Pipelines were not designated by the previous owners but, in the absence of evidence of designation, argued that there should be no presumption that it occurred.

Lagasco referred to section 25 (2) of the Assessment Act, which states: “On or before March 1 of every year or such other date as the Minister may prescribe, the pipe line company shall notify the assessment corporation of the age, length and diameter of all of its transmission pipe lines located on January 1 of that year in each municipality and in non-municipal territory”. Lagasco submitted that section 25 (2) of the Assessment Act provided for an annual designation by the pipe line owner as an essential prerequisite of the assessment of pipe line as a transmission pipe line pursuant to the Assessment Act. Lagasco argued that the annual designation requirement has not been met by MPAC in respect of Lagasco's Pipelines (nor TAQA's North Ltd.'s (TAQA) which are discussed in more detail below). As well, it is argued by Lagasco that MPAC is not complying with the mandatory terms of section 25 (2) of the Assessment Act by its practice to assess pipe lines in perpetuity once they have been added to the assessment rolls.

Lagasco submitted that the OPI Evidence in relation to two pipe lines owned by TAQA demonstrates that MPAC will assess pipe lines for taxation despite the fact that the owner has never provided any information about the pipe lines to MPAC or submitted a designation that they are “pipe lines” under section 25 (1) of the Assessment Act.

Position of MPAC

MPAC submitted that it 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 section 25 of the Assessment Act. MPAC stated that its standard procedure, when it receives information concerning the installation of new pipe lines, is

¹⁴ Tribute Resources Inc. v. Ontario (Energy Board) [2018] O.J. No. 324

to confirm the location, type, pipe diameter and length, and year of installation. According to MPAC the designation and reporting of new pipe lines under section 25 of the Assessment Act occurs simultaneously¹⁵. MPAC considers information received concerning the installation of a pipe line as fulfilling the designation requirement in section 25 (1). Once this information has been confirmed, MPAC adds the new pipe line to the assessment roll for the municipality.

MPAC was unable to produce the original designation documents of any type in respect of the Pipelines. In accordance with its record retention policy, these documents are not kept by MPAC. MPAC submitted that notwithstanding the absence of documentary evidence, the OEB should accept that the Pipelines were so designated. In MPAC's view, once the first assessment post-designation has been made and not appealed, there is no need for MPAC to retain the designation in its files¹⁶.

MPAC also noted that there was no challenge to the assessment of the Pipelines until Dundee filed appeals to the Assessment Review Board (ARB) in 2015. MPAC stated that Notices of Assessment would have been sent by the relevant municipalities to the owners of the pipe lines clearly stating that Pipelines were assessed as transmission pipe lines. As no appeal had been made, the assessment rolls were deemed to be correct and binding up to 2012 in accordance with section 41 of the Assessment Act.

MPAC submitted that section 25 (2) of the Assessment Act that requires that pipe line companies notify MPAC every year concerning the age, length, and diameter of their pipe lines does not provide for a re-designation by the pipe line owner. In its view, once a pipe line is designated, the designation continues until the pipe line is abandoned. MPAC argues that 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 MPAC. It also would not have been necessary to provide for the assessment of pipe lines no longer being used or abandoned.

Position of the Municipalities

The Municipalities supported MPAC's evidence that the Pipelines have been assessed in accordance with section 25 since they were designated by their then owners. At that time, pursuant to MPAC's standard procedure, they would have been added to the assessment roll based on such designation.

¹⁵ MPAC response to OEB staff interrogatory on MPAC's evidence No. 3(a) (dated September 17, 2020)

¹⁶ MPAC response to OEB staff interrogatory No. 3 f), MPAC submission, MPAC response to OEB staff supplemental interrogatory No. 1 a) ii.

Position of OPI

OPI submitted that MPAC “did and does not rely upon the owner designation mechanism under the Assessment Act” and that “MPAC instead has been formulating and registering these designations without knowledge or consent of the pipe line owner.”¹⁷

OPI filed the affidavit evidence of Mr. Jim McIntosh, Chairman of OPI, in support of its submissions. Mr. McIntosh set out his observations concerning the issues of designation and provision of pipe line information to MPAC for assessment purposes. These observations were based on his experience while engaged in various capacities in management and operations over the last 28 years by the owners of natural gas production facility at Innerkip and an oil producing facility at Rodney, both now owned by TAQA.

Mr. McIntosh stated that MPAC had assessed Pipelines as pipe lines under section 25 (1) of the Assessment Act without any designation by the owner and even without information provided by the owners. With respect to his client TAQA, he noted that only one pipe line in TAQA’s more extensive system that had been assessed by MPAC as transmission pipe lines had ever been designated by the current owners or the previous owners at any time since his involvement with the Innerkip or Rodney facilities. Mr. McIntosh advised that the majority of the Innerkip facilities had been installed during his tenure between 1992 and 2000.

Mr. Ryan Ford’s affidavit on behalf of MPAC filed in response to Mr. McIntosh’s affidavit disputed Mr. McIntosh’s evidence with respect to the number of requests that had been made by MPAC for information pursuant to section 25 (2) of the Assessment Act concerning the TAQA pipe line system. Mr. Ford also denied any use by MPAC of maps provided to the Ministry of Natural Resources and Forestry (MNRF). Mr. Ford’s affidavit did not specifically address Mr. McIntosh’s assertions concerning the lack of designation of pipe lines assessed as transmission pipe lines owned by the companies by whom he had been engaged. Nor was there any assertion in Mr. Ford’s affidavit that the procedure followed by MPAC for designation purposes for the TAQA system may have differed from that followed for the Lagasco Pipelines.

Position of OEB Staff

OEB staff submitted that it appears that the Pipelines were designated by their then owners as transmission pipe lines at the time they were installed. Had they not been so designated, they would not have been entered by MPAC as such on the municipal

¹⁷ OPI Evidence, page 2

assessment rolls. To the extent an error had been made, the then owners would have had the ability to appeal the designation after the first assessment of the pipe lines, which does not appear to have happened (or, if it did happen, it was not successful).

OEB staff agreed with MPAC that the two TAQA pipe lines are not part of the Application that is before the OEB. OEB staff submitted that the OPI Evidence is not relevant to the issue of whether the Pipelines are pipe lines for the purposes of the Assessment Act.

Findings - Designation by Owner

The second condition for classification of a pipe line as a transmission “pipe line within the meaning of section 25 (1) of the Assessment Act is that the owner must designate the pipe line as a transmission pipe line. The OEB finds that there is insufficient evidence of owner designation of the Pipelines as transmission pipe lines, and that the Pipelines therefore do not meet the definition of “pipe line” under the Assessment Act.

Meaning of Designation

The Shorter Oxford English Dictionary defines “designate” as:

1. To point out and indicate; to specify;
2. To point out by name or description; to name denominate;
3. To appoint, nominate for duty or office;
4. To destine to a purpose or fate¹⁸

In *R. v. Canada Warehousing Services Ltd.*, the Saskatchewan Court of Queen’s Bench considered the meaning of the term “designated” in regulations designating a substance as a pesticide. The court concluded after review of encyclopedic legal sources and older case law that for a substance to be so designated it must be “pointed out by name or descriptive appellation” or “specially described” as pesticide¹⁹.

¹⁸ The Shorter Oxford English Dictionary, 1985 Edition, p. 528

¹⁹ *R. Canada Warehousing Services Ltd.* [1982] Carswell Book 197 at paras 9-12 referencing *Griffith v. Howes* (1903) 50.L.R.439 and *Newton v. Marleybone Borough Council* (1914) 78J.P. 169 (C.A.) A similar meaning of designate was adopted in *Ebco Industries Ltd., Plaintiff and Her Majesty the Queen.* Defendant

The simple provision or obtaining of information cannot be enlarged to encompass the act of designation. The judicial treatment of “designate” emphasizes that the term connotes the provision of a specific description or appellation. While all designations provide information, information itself is not designation unless accompanied by the use of a specific name or quality to the subject of the information.

The current iteration of the Assessment Act provides that a transmission pipe line must be so designated by the owner. The designation then incurs an obligation on the part of the owner of a designated pipe line under section 25 (2) of the Assessment Act to provide specific information about all of its transmission pipe lines.

Proof of Designation

Between approximately 1957 and 1969 the required designation had to be made by the OEB itself, and not the owner of the pipe lines.²⁰ Unsurprisingly, there is no evidence available concerning the carrying out of designations by the OEB during that period of time. Lagasco’s objection to the classification of its OEB-designated Pipelines as transmission pipe lines under section 25(1) in this proceeding was based on their function as gathering pipelines not as a result of any alleged failure of OEB designation in the past. Lagasco’s contention based on the function of its Pipelines has been rejected by the OEB elsewhere in this Decision. Accordingly, the OEB makes no finding that alters the current assessment of these Pipelines as transmission pipe lines pursuant to section 25 (1) of the Act.

MPAC’s proof of designation by Lagasco or its predecessor owners of the Pipelines was primarily based on the following assertions:

- Designation by a pipe line owner had to have occurred for MPAC to be able to add the pipe line to the assessment rolls
- Assessment notices would have been sent to the owners by the municipalities stating clearly that the land was being assessed as a pipe line
- No objection was received to the assessment of Pipelines until 2015 when appeals to the ARB were stayed pending resolution of the Tribute Resources case²¹

MPAC’s evidence disclosed that it has no documents or records of any designation of the subject Pipelines. There are also no witnesses to attest to the designation of any of

²⁰ During this period the OEB was also responsible for conveying pipeline information to the municipal tax authorities for assessment purposes, Assessment Act RSO 1960, c.23 section 41(3)

²¹ Eb-2015-0206, Divisional Court Decision Tribute Resources v. Ontario Energy Board {2018} O.J. 324

the Pipelines. MPAC stated that if a first assessment of the pipe lines is not challenged by an appeal to the ARB, owner designation records are not maintained by MPAC. This is because MPAC considers the assessment final and not subject to challenge under section 41 of the Assessment Act.

The protocol for the recognition of owner designation was further elaborated in MPAC's responses to OEB staff interrogatories. It was disclosed that there is no specific communication to pipe line owners concerning the designation requirement. MPAC also does not require a specific document to satisfy the designation (pursuant to section 25 (1)) or reporting (pursuant to section 25 (2)) requirements and believes that designation occurs simultaneously with reporting²². MPAC confirmed that information and description provided for a pipe line is sufficient for their purposes to constitute owner designation²³.

MPAC's practice²⁴ is to accept the information relating to the location and description of the pipe line when first received as being a fulfillment of the designation requirement without the owner specifically designating the pipe line. The OEB notes that when annual information filings are not submitted pursuant to section 25 (2), MPAC does not regard this omission as a withdrawal of the designation²⁵. Lagasco argued that annual designation is required as part of the requirement to inform MPAC of the specifics of the installed pipe line. Therefore, Lagasco submitted that there is no current designation without an annual filing. The OEB finds that both the MPAC treatment of a pipe line as designated without specific owner designation, and the Lagasco assertion that there is no designation in the absence of annual filing information are inconsistent with section 25 (1) and section 25 (2) requirements.

The OEB notes that section 41 of the Assessment Act provides finality to any dispute concerning entries in tax rolls or the notices provided to the taxpayer. However, in accordance with section 25 (3) of the Assessment Act, any disputes as to whether or not a gas pipe line is a transmission pipe line are to be decided by the OEB. It appears that the ARB would have to accept the assessment of the pipe lines based on the findings of the OEB²⁶. The destruction of all records of owner designation by MPAC is thus not helpful to the OEB's resolution of such disputes when they occur.

²² OEB Staff Interrogatory of MPAC affidavit 1 a (ii)

²³ OEB Staff Interrogatory of MPAC affidavit 1 a (iii)

²⁴ MPAC's responses to OEB staff interrogatories 1(a)(ii) and 3(a) describe their practice.

²⁵ As noted on page 14 of the finding, designation and information are separate concepts. In its Submissions of MPAC of February 18, 2021, paras 67 and 68 maintain that designations cannot be altered until abandonment and are not required on an annual basis.

²⁶ This practice appears to have been followed by the ARB in staying the Dundee appeal until the Tribute application was heard.

While the Tribute Decision accepted the existence of an owner designation by the presence of its pipe lines on the rolls, that OEB panel did not have the same evidence before it that is available to the OEB in this proceeding. This includes the interrogatory responses by MPAC concerning its practice of treating information provided as part of the notification requirements under section 25 (2) of the AA as designation under section 25 (1) of the AA. And while the evidence of Mr. McIntosh pertains to a different set of pipe lines, his personal experience with the assessment process for multiple facilities over many years contradicts the presumption that owner designation had to have occurred for a pipe line to appear as a transmission pipe line on the assessment rolls.

The OEB finds that there must be specific designation by the pipe line owner pursuant to section 25 (1) to meet its classification as a transmission pipe line and be assessed as a “pipe line”. The information to be provided by a pipe line owner pursuant to section 25 (2) is subsequent to any designation and cannot take the place of that designation.

The OEB is not satisfied that there is sufficient evidence of owner designation for the Pipelines. The evidence provided by MPAC as to its interpretation of the meaning of owner designation, together with the affidavit evidence of Mr. MacIntosh makes the conclusion of the existence of owner designation a difficult one to reach without additional evidence of owner designation. The long-time presence of the Pipelines on the tax rolls without their pipe line owners seeking redress from the OEB is a significant but not sufficient consideration for the OEB to find that owner designation within the meaning of section 25 (1) has occurred.

The OEB’s decision on this issue is confined to the classification of the Pipelines in issue and is based solely on its finding of insufficient evidence of designation that was offered in this proceeding. The OEB’s only responsibility under the current application is to determine if the Pipelines are “pipe lines” pursuant to section 25 (1) of the Assessment Act. The OEB has done so, but will not comment on how and for what dates its determination will be implemented.

The existing practice of MPAC categorization and assessment following receipt of information concerning pipe lines may be a reasonable administrative practice in the abstract. However, the plain language of the statute cannot be brushed aside. The OEB notes that there appears to be no explicit obligation in the Assessment Act imposed on the pipe line owner to designate any pipe line as a transmission pipe line. Yet that act of designation is a requirement under section 25 (1), and the OEB cannot make a determination that a pipe line is a “pipe line” pursuant to its powers under section 25 (3) unless it is satisfied that such a designation has been made. And while this designation step may be an uneasy fit with the orderly administration of the Assessment Act, it must

be shown to have been complied with. The court in the above-described case *R .v. Canada Warehousing Service Ltd.* explained this responsibility for statutory compliance by noting the judgement in *Hill v. William Hill (Park Lane Ltd.)*²⁷:

The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is good reason to the contrary, the words add something which would not be there if the words were left out.

²⁷ *Hill v. William Hill (Park Lane Ltd.)*, [\[1949\] A.C. 530 at 547](#), [\[1949\] 2 All E.R. 452](#) (H.L.)

4 CONCLUSION

The OEB finds that, although the Pipelines are used to transport gas, it is not satisfied that they were designated by the owner as required by the second condition of section 25 (1) of the Assessment Act. The Pipelines are therefore not “pipe lines” within the meaning of section 25 (1) of the Assessment Act. For the reasons set out under Proof of Designation, the OEB will not extend this finding to include the Pipelines installed during the period that the OEB was responsible for their designation.

The OEB has been reminded by the parties supportive of upholding the current tax assessment of the Pipelines that the decision required of the OEB in this proceeding is a limited one. In their submissions, the OEB’s role is restricted to the determination of whether the applicant Lagasco’s Pipelines are transmission pipe lines within the meaning of section 25 (1) of the Assessment Act. In their view, the financial consequences of the subsequent tax treatment of those Pipelines are not relevant to the OEB’s role in this proceeding. As counsel for the Municipalities has pointed out, “[t]his Board’s interpretation shouldn’t be driven by the implications of one interpretation or another and what those might imply for impact on market or stakeholder interests”²⁸.

The OEB agrees. As set out in this decision, the OEB has determined its interpretation of the wording of section 25 (1) independent of those consequences of the suggested potential financial calamity in the natural gas production industry or the administrative difficulties associated with the finding of a lack of sufficient proof of designation.

The OEB appears to have been given its statutory task in the Assessment Act based upon its specialized expertise in the regulation of the natural gas industry. From that vantage point, the OEB would make several observations. There appears to be significant differences in the operation and value of the different types of pipe lines that are now classified as “transmission pipe lines” pursuant to the Assessment Act. These differences do not appear to be reflected in the legislative scheme for pipe line classification and assessment. As well, the statutory requirement for owner designation of transmission pipe lines is of questionable utility to efficient municipal tax assessment of those pipe lines. A full examination of these issues directed by the provincial government would be a welcome development.

²⁸ Oral Hearing Transcript, p.54

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Lagasco Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto April 15, 2021

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar