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October 28, 2019

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Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, P.O. Box 2319
Toronto, ON M4P 1E4 (boardsec@ontarioenergyboard.ca)

Dear Ms. Walli:

EB-2019-0007 – City of Toronto Motion – Reply of Imperial Oil Limited

Further to Procedural Order No. 5 dated October 11, 2019, please find enclosed the written reply submissions of Imperial Oil Limited regarding the motion filed by the City of Toronto.

Please do not hesitate to contact me if you have any questions.

Yours very truly,



Richard J. King

c (email only): Patrick G. Welsh/Isabelle Crew, *Osler, Hoskin & Harcourt LLP*
Jessie Malone/Zahra Allidina/Ian Laing, *Imperial Oil Limited*
All Intervenors in EB-2019-0007

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B), as amended (the “Act”);

AND IN THE MATTER OF an Application by Imperial Oil Limited under sections 90(1) and 97 of the Act for an order granting Leave to Construct of a hydrocarbon distribution pipeline and ancillary facilities to serve the Greater Toronto and Hamilton Area;

AND IN THE MATTER OF an Motion by the City of Toronto for an Order under sections 8, 11 and 27.03 of the *Ontario Energy Board Rules of Practice and Procedure*.

**MOTION SUBMISSIONS OF
IMPERIAL OIL LIMITED**

October 28, 2019

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PART I - OVERVIEW

1. In April 2019, Imperial Oil Limited (“**Imperial**”) applied to the Ontario Energy Board (“**OEB**” or the “**Board**”) for leave to construct its Waterdown to Finch Project, a proactive replacement of a vital segment of its Sarnia Products Pipeline (“**SPPL**”). Operating safely for many decades, the SPPL is important infrastructure that provides refined products used by households and businesses across the Greater Toronto and Hamilton Area. To support continued safe, reliable, and environmentally responsible transportation of products, Imperial is planning to construct and operate a new pipeline that will replace the transportation capabilities of an existing SPPL segment between rural Hamilton and North York.
2. To that end, Imperial has applied to the OEB for leave to construct approximately 63 kilometres of pipeline and associated infrastructure to transport refined oil products from its pump station in the City of Hamilton (Waterdown) to its facility in the City of Toronto (Finch) (the “**Project**”) and approval of the forms of easement agreement related to the construction of the proposed pipeline.¹
3. The products transported by the SPPL pipeline infrastructure originate from and are manufactured in Sarnia, Ontario, a significant distance from the distribution terminal in North York. The replacement of the Waterdown to Finch segment is a proactive initiative to address aging pipeline infrastructure and support continued safe and reliable supply to the region. As exemplified by the letters of support included in Imperial’s Application for Leave to Construct, this pipeline is critical to the service delivery of Imperial’s customers and supply for industrial, commercial and retail outlets in the province, including the Greater Toronto Airports Authority (Toronto Pearson International Airport).
4. In addition to the leave to construct process, Imperial is working collaboratively with a broad range of local, provincial and federal entities on other permits and approvals related to the Waterdown to Finch Project. Imperial is committed to ongoing engagement and to address concerns from interested parties in an appropriate and effective manner.
5. The City of Toronto (“**Toronto**” or “**the City**”), in its capacity as an intervenor on this Application for Leave to Construct, brought a motion pursuant to Rule 27.03 of the OEB *Rules of Practice and Procedures*² (the “**Rules**”) requesting additional information associated with its interrogatories.
6. As will be detailed further in the submissions below, the information requested in this motion is not relevant to the City in its capacity as an intervenor on a leave to construct application. The City is requesting information that is properly before the Technical Standards and Safety Authority (“**TSSA**”) to help determine whether the SPPL meets the

¹ EB-2019-0007, [Application for Leave to Construct](#) (25 February 2019) at Tab 1, Schedule 3, p. 1 [Application].

² Ontario Energy Board, [Rules of Practice and Procedure](#), r. 22.03 [Rules].

safety and technical standards mandated under *Technical Standards and Safety Act, 2000* (“**TSSA Act**”).

7. Imperial respectfully submits that while the City, as an intervenor, may submit evidence, arguments, or interrogatories, it may not use the leave to construct process in an attempt to step into the shoes of the TSSA and indefinitely extend the leave to construct application process. The TSSA, as the hands-on regulatory authority and Ontario Pipeline Coordinating Committee (“**OPCC**”) member, is the entity that the OEB relies on in determining whether a project meets applicable technical and safety standards. The City is not.
8. The City has been provided with ample additional time to review the very same materials provided to the OPCC, OEB Staff, and the other intervenors. The information the City seeks pursuant to its motion is of low probative value to the OEB and is not relevant given the TSSA’s review and comments before the Board.
9. For the reasons set out in these submissions, Imperial respectfully submits the OEB should:
 - (a) dismiss the City’s motion;
 - (b) order that OEB Staff and intervenors file final written submissions with the OEB and serve it on Imperial and all intervenors within five business days following the Board’s order; and
 - (c) order that Imperial may file a written reply submission with the OEB and serve it on all intervenors within fifteen business days following the deadline for submissions of OEB Staff and intervenor submissions.
10. Notwithstanding the above, in the interest of continued cooperation with the intervenors and if so directed by the Board, Imperial is prepared file the following documents with the Board pursuant to Rule 10 (confidential filings)³:
 - (a) Imperial’s Safety and Loss Management System (“**SLMS**”) Framework which outlines how Imperial meets the requirements of the SLMS through a robust application of the Operations Integrity Management System (“**OIMS**”) Framework. This document maps the required elements of CSA Z662 to the corresponding OIMS elements;
 - (b) 2018 TSSA Audit Report of Imperial’s SPPL Integrity Management Program;
 - (c) Imperial’s preliminary risk assessment for the Project; and
 - (d) the results of Imperial’s final risk assessment for the Project, upon final submission to the TSSA (i.e., when available).

³ *Ibid* at r. 10.01.

11. Upon provision of the above documents (if so directed) that are currently available, Imperial expects and respectfully requests that the OEB provide for an expeditious schedule for written submissions consistent with paragraph 9 above.

PART II - BACKGROUND

A. The OEB Process

12. On February 25, 2019, Imperial applied to the OEB under sections 90(1) and 97 of the *Ontario Energy Board Act, 1998* (“**OEBA**”)⁴ for leave to construct approximately 63 kilometres of pipeline and associated infrastructure to transport refined oil products from its pump station in the City of Hamilton (Waterdown) to its facility in the City of Toronto (Finch) and approval of the forms of easement agreement related to the construction of the proposed pipeline.⁵
13. Consistent with the process outlined in the *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*⁶ (“**Environmental Guidelines**”), on February 1, 2019 Imperial submitted pre-filing application evidence, including the Waterdown to Finch Environmental Report prepared by ERM Worldwide Group Ltd (the “**Environmental Report**”) to the members of the OPCC for review and comment.⁷
14. On April 11, 2019, the OEB issued a Notice describing Imperial’s Project application and providing an opportunity for interested persons to participate in the OEB’s hearing of the application. Between April and June 2019 Bell Mobility Inc., Canadian Manufacturers and Exporters, Enbridge Gas Inc., Greater Toronto Airports Authority, Hydro One Networks Inc., Peter and Tim Virtanen, Huron Wendat Nation, City of Mississauga, City of Toronto, City of Hamilton, Halton Region, and the Regional Municipality of Peel (collectively, the “**Intervenors**”), applied for and were approved as intervenors in this proceeding pursuant to Rule 22.⁸
15. On July 13, 2019, the City filed interrogatories in accordance with Procedural Order No. 2, and on August 6, 2019, Imperial filed its responses.⁹ Imperial received and provided detailed responses to 97 interrogatories from the Intervenors and Board Staff. Including the 19 appendices in which Imperial provided additional documents in response to interrogatories, Imperial’s responses exceed 1000 pages.
16. On August 9, 2019, the City filed a letter with the OEB requesting an extension for the Intervenors’ deadline to file written submissions, on the basis that Imperial’s Responses to

⁴ [Ontario Energy Board Act, 1998](#), S.O. 1998, c. 15, Sched. B [OEBA].

⁵ EB-2019-0007, [Application](#) at Tab 1, Schedule 3, p. 1.

⁶ Ontario Energy Board, [Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario](#), 7th ed (2016) at s. 1.3.1.

⁷ [Application](#) at Tab 1, Schedule 2, pp. 1–2.

⁸ EB-2019-0007, [Procedural Order 1](#) (31 May, 2019).

⁹ EB-2019-0007, [Interrogatory Response from Applicant](#) (6 August 2019).

interrogatories were so extensive that further time for review was required (the “**Toronto August 9 Letter**”). The City stated that it “hopes to use the additional time to seek agreements on various matters with Imperial, thereby reducing the scope of contested matters before the Board.”¹⁰

17. On August 13, 2019, the OEB provided an opportunity to Imperial to reply to the August 9 Letter. Imperial filed its letter that day (the “**Imperial August 13 Letter**”), advising that it did not take exception to an extension request of up to two weeks (10 business days) and confirming that Imperial was committed to meaningful engagement with and addressing the questions of the City of Toronto, but also asking the OEB to consider the wider regulatory context and the impact to Project timelines:

The OEB Leave to Construct is only one aspect of project progression. However, it affects subsequent activities. Secondary permits sought by Imperial from Provincial ministries and agencies in support of the Project typically require the Leave to Construct to be granted by the OEB prior to permit approval. Combined with other considerations, a cumulative two month delay in the OEB process will impact overall Project schedule. Imperial has been taking necessary actions to have this line in service within the anticipated timeframe, including adherence to this regulatory process.¹¹

18. On August 14, 2019, the City filed a letter (the “**Toronto August 14 Letter**”) that “reiterate[d] the contents of [its] letter of August 9, 2019” and added the following clarification:

Toronto has reiterated to Imperial its request for further information necessary to assess this Application, including particulars of the proposed permanent land interest acquisitions, and records sought in Toronto's interrogatories but not provided to date. The timeliness of this disclosure, should it be provided voluntarily, is outside the control of Toronto.¹²

19. In Procedural Order No. 4, the OEB “render[ed] its decision on Imperial Oil’s confidentiality request [contained in Imperial’s interrogatory responses of August 6] and on the City of Toronto’s procedural schedule extension request [from the Toronto August 9 Letter].”¹³ In granting the City’s procedural schedule extension request, the OEB balanced the need for providing the City with a reasonable amount of time to prepare final submissions with the impact on Imperial’s construction schedule.¹⁴

¹⁰ EB-2019-0007, Correspondence, [City of Toronto Letter Requesting Extension](#) (9 August 2019) at p. 1 [Toronto August 9 Letter].

¹¹ EB-2019-0007, Correspondence, [Imperial Response to City of Toronto Extension Request](#) (13 August 2019) at p. 1 [Imperial August 13 Letter].

¹² EB-2019-0007, Correspondence, [City of Toronto Reply](#) (14 August 2019) at p. 1.

¹³ [Procedural Order No. 4](#) at p. 2.

¹⁴ *Ibid* at p. 4.

20. The OEB also directed Imperial to “file on the record the information referenced in the [Toronto August 14 Letter] associated with its interrogatories, no later than August 23, 2019.”¹⁵
21. In accordance with Procedural Order No. 4, Imperial filed a letter on August 23, 2019 providing further information in response to the Toronto August 14 Letter (the “**Imperial August 23 Letter**”). In the Imperial August 23 Letter, Imperial advised that:
- (a) the City had requested information to assist its emergency preparedness and response efforts as well as assurances related to insurance and indemnification;
 - (b) Imperial would meet all safety requirements of the TSSA; and
 - (c) Imperial would work directly with the City to provide it with sufficient information in a timely manner and proposed updating the OEB on the information provided to the City at the time of the written notice of the commencement of construction.¹⁶
22. Following the Board issuing Procedural Order 4, Imperial continued to work with the City, and requested the Board extend submission deadlines to facilitate Imperial’s continuous engagement with the City on various matters including requested information.¹⁷ The Board granted these requests.¹⁸
23. On October 10, 2019 the City of Toronto requested more information and a further extension of the submission deadlines.
24. On October 11, 2019 the OEB issued Procedural Order No. 5, suspending the existing timelines and ordering that parties may file submissions in response to the City of Toronto’s request for the following information:
- (a) The complete results of all audits, whether internal or external, conducted of Imperial’s Safety and Loss Management System program, including Imperial’s response to these audits;
 - (b) A copy of Imperial’s Integrity Management Program as required by CSA Z662-15 Clause 3.1.2 (f and v) and Clause 3.2, and complete details of all audits, whether internal or external, conducted of this Program including Imperial’s response; and

¹⁵ *Ibid.*

¹⁶ EB-2019-0007, Correspondence, [Imperial Response to Procedural Order 4](#) (23 August 2019) at p. 1.

¹⁷ EB-2019-0007, Correspondence, [Imperial Extension Request](#) (30 August 2019) at p. 1 [Imperial August 30 Letter]; EB-2019-0007, Correspondence, [Imperial Extension Request](#) (18 September 2019) at p. 1 [Imperial September 18 Letter].

¹⁸ EB-2019-0007, Correspondence, [Ontario Energy Board Extension Approval](#) (3 September 2019) at p. 1; EB-2019-0007, Correspondence, [Ontario Energy Board Extension Approval](#) (3 September 2019) at p. 1.

- (c) The complete risk analysis performed on the existing line, and on the proposed replacement line indicating where consequence levels may have changed between the existing and proposed pipelines.¹⁹
25. On October 17, 2019, Toronto formally filed a letter with the OEB seeking the above information, which it described as “supplementary submissions...further to our Notice of Motion of October 10, 2019”.²⁰ In its supplementary submissions Toronto took the position that Rule 2.02, which authorizes the Board to set its own procedures, supported its argument that the Board should order the disclosure.²¹
26. The City of Mississauga,²² the Region of Peel,²³ and the Regional Municipality of Halton²⁴ (the “**Supporting Intervenors**”) have filed submissions in support of the City of Toronto’s motion.
- B. The TSSA Process**
27. In its submission of October 17, the City argued that “the requested disclosure is needed to ensure that the pipeline is built and operated safely”.²⁵ In order to understand why the City’s request is not relevant to its role as an intervenor in the leave to construct process, an overview of the regulatory processes in place that ensure the safe construction and operation of pipelines in Ontario is required.
28. In addition to the requirement to obtain leave to construct, hydrocarbon pipeline construction and operation in Ontario is subject to the technical and safety standards established by the TSSA pursuant to its authority under the TSSA Act.²⁶
29. Pursuant to O. Reg. 210/01, made under the TSSA Act, any person engaged in the design, construction, erection, maintenance, alteration, repair, service or disposal of oil and gas industry pipeline systems must comply with the TSSA Act and the Regulations.²⁷ Under the TSSA Act, a person is required to obtain an authorization in accordance with the Act

¹⁹ EB-2019-0007, [Procedural Order No. 5](#) (11 October 2019) at p. 3 [Procedural Order No. 5].

²⁰ EB-2019-007, [City of Toronto Supplementary Motion Submission](#) (17 October 2019) at p. 1 [Toronto Supplementary Submissions]. As of October 28, 2019, the City’s purported Notice of Motion dated October 10, 2019 has not been added to the OEB’s webdrawer for this hearing.

²¹ *Ibid* at p. 3.

²² EB-2019-007, [City of Mississauga Letter of Support](#) (17 October 2019).

²³ EB-2019-007, [Region of Peel Letter of Support](#) (11 October 2019).

²⁴ EB-2019-007, [Regional Municipality of Halton Letter of Support](#) (21 October 2019).

²⁵ [Toronto Supplementary Submissions](#) at p. 1.

²⁶ *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16 [TSSA Act]

²⁷ [O. Reg. 210/01](#), ss. 2(1), 3.

before carrying out the activities referred to in the regulations.²⁸ Authorizations required by O. Reg 210/01 include, among others:

- (a) Obtaining a license to transmit or distribute gas;²⁹
 - (b) Obtaining a license in order to handle oil and gas, which includes the storage, transmission, transportation or distribution of oil or gas;³⁰ and
 - (c) Obtaining a license for a pipeline and ensuring the that the pipeline meets the requirements of the regulation, prior to activation.³¹
30. The TSSA may refuse to grant, or may revoke, any of these licenses if the applicant does not meet prescribed technical and safety standards.³² For the purposes of O. Reg 210/01, the standards for oil and gas pipelines are contained in the *Oil and Gas Pipeline Systems Code Adoption Document* (the “**Code Adoption Document**”) published by the TSSA and adopted by regulation under the Act.³³ That document, in turn, adopts, subject to certain modifications, the standards issued by the Canadian Standards Association entitled *Oil and Gas Pipeline Systems Z662* (“**CSA Z662**”).³⁴
31. The SPPL is a TSSA-licensed pipeline. It is Imperial’s experience and expectation that the TSSA has and will continue to utilize its broad powers to assess and inspect licensed infrastructure, including the SPPL, to ensure compliance with its standards both prior to and during construction, as well as throughout the life of the SPPL.³⁵
32. During the leave to construct process before the OEB, the TSSA acts as a member of the OPCC.³⁶ In that capacity, the TSSA reviews the Environmental Report and any other information it may request in order assess whether the Project will comply with TSSA standards. In parallel to the leave to construct process, the proponent submits an Engineering Design Approval – Application for Review of Pipeline Project to the TSSA in order to facilitate the TSSA’s review of the Project and guide the TSSA’s input on the leave to construct process as an OPCC member. Once the OEB grants leave to construct,

²⁸ *Ibid.*, s. 6(1).

²⁹ *Ibid.*, s. 18(1).

³⁰ *Ibid.*, s. 5.

³¹ *Ibid.*, s. 15(1).

³² [TSSA Act](#), s. 6(5).

³³ [O. Reg. 223/01](#), s. 8.

³⁴ TSSA, [Oil and Gas Pipeline Systems Code Adoption Document](#) (1 June 2001), as amended from time to time, s. 2(1).

³⁵ [TSSA Act](#), ss. 3.12–3.13; [O. Reg 210/01](#), ss. 14, 18(5).

³⁶ [Environmental Guidelines](#), at p. 7.

the TSSA assumes an active, hands-on role in regulating the construction and operation of the pipeline.

33. The TSSA has been provided with and is currently reviewing all required documentation associated with the Project. On October 25, 2019 the TSSA provided Imperial with a letter outlining the current status of its review of the Project, which Imperial filed with the OEB (the “**TSSA Letter**”).³⁷ In the TSSA Letter, the TSSA confirmed that the Project has been selected for full audit and that the TSSA will “audit and inspect the SPPL to ensure compliance with applicable technical and safety standards for construction and operation”.³⁸ Imperial expects to continue working with the TSSA to ensure that the Project meets all requisite safety and technical standards.

PART III - ARGUMENT

34. For the reasons set out in these submissions, Imperial respectfully submits the OEB should dismiss the City’s motion.

A. The Information Sought is not Relevant

35. Imperial has provided a full and adequate response to the interrogatories posed by the Intervenor and by Board Staff. The additional information requested is not relevant to the City in its capacity as an intervenor on a leave to construct application.
36. The application before the OEB is an application for leave to construct pursuant to section 90(1) of the OEBA.³⁹ On a leave to construct application, if the Board is of the opinion that the proposed work is “in the public interest”, it shall make an order granting leave to carry out the work.⁴⁰ When determining whether a project is in the public interest, the OEB typically examines the need for the project; the project cost and economics; the environmental impacts; impacts on landowners; and Indigenous consultation.⁴¹
37. Interrogatories must be relevant to this inquiry. As set out in Rule 26.02(d), interrogatories must “contain specific requests for clarification of a party’s evidence, documents or other information in the possession of the party and relevant to the proceeding”.⁴²
38. As set out in the Environmental Guidelines, the leave to construct process recognizes that throughout the life of any project there are other institutions that regulate the construction

³⁷ EB-2019-007, [TSSA Letter Regarding Status of Project Review](#) (25 October 2019) [TSSA Letter].

³⁸ *Ibid.*

³⁹ [OEBA](#), s. 90(1).

⁴⁰ *Ibid.*, s. 96.

⁴¹ [EB-2018-0263](#), Decision and Order (11 July 2019) at p. 14.

⁴² [Rules](#), r. 26.02(d) [emphasis added].

and operation of the project.⁴³ As described above, the TSSA has and will continue to act as the hands-on safety regulator in ensuring that the construction and operation of the Project comply with all technical and safety requirements under the TSSA Act, O. Reg 210/01, the Code Adoption Document, and CSA Z662.

39. While technical standards are a consideration in leave to construct proceedings, the Board has in previous proceedings held that it will defer to regulatory agencies that have direct responsibility for the applicable standard.⁴⁴ By way of example, in EB-2010-0302 the Board held that where projects “can be implemented by a responsible company in a manner that meets the applicable safety and technical standards, as is the case here, they should be approved”.⁴⁵
40. The OEB relies on the technical expertise of the TSSA for the purposes of the leave to construct application. In its assessment of the public interest, the OEB does not assume the role of other regulatory agencies, such as the TSSA, in assessing the merits of whether a given project meets complex technical licensing requirements. This approach is consistent both with the relative expertise of the TSSA in determining whether a project meets technical standards and the express grant of jurisdiction to the TSSA to make such determinations under the TSSA Act. The Board has recognized that the standard conditions on a leave to construct approval ensure that the requirements of other approvals, permits, licenses and certificates are fully addressed.⁴⁶
41. Like all parties, Imperial is committed to ensuring the Project is built and operated safely; to do so it works diligently with the TSSA to ensure that all applicable safety and technical standards are met. The TSSA is currently in the process of reviewing the required material submitted by Imperial and has confirmed that the Project has been selected for full audit. The TSSA Letter sets out the current status of the TSSA’s review as well as the TSSA’s ongoing review process:

This application has been reviewed on the technical aspects of the project including design, material specification, wall thickness calculation, class location analysis and valve spacing for this project. Initial draft of the hazard identification and mitigation has been submitted and reviewed. Complete risk assessment will be submitted for review prior to construction.

Submitted documents from IOL meet O.Reg. 210\01 and Oil and Gas Pipeline code adoption document, FS-238-18. This project has been selected for full audit. TSSA will audit and inspect the SPPL to ensure compliance with applicable technical and safety standards for construction and operation.⁴⁷

⁴³ [Environmental Guidelines](#), at s. 5.9.

⁴⁴ Geln Zacher, Patrick G. Duffy & David M. Brown, *Energy Regulation in Ontario* (Toronto: Thompson Reuters Canada Limited, 2018) at § 4:120:20.4.

⁴⁵ [EB-2010-0302](#), Decision and Order (21 March 2011) at p. 11.

⁴⁶ See [EB-2018-0263](#), Decision and Order (11 July 2019) at p. 13.

⁴⁷ EB-2019-007, [TSSA Letter](#).

42. Imperial expects to continue working with the TSSA to ensure that the Project meets all requisite standards.
43. The Board consistently relies on the TSSA's review in its decisions approving leave to construct.⁴⁸ Because the OEB relies on the TSSA to make determinations as to safety and technical compliance, submissions made by the City based on the requested information will be of limited probative value when compared to the conclusions of the technical regulator. For this reason, and those outlined in the section to follow, the information requested is not relevant to the City in its role as an intervenor on a leave to construction application.

B. Summary of the Information Sought

44. In order to consider the relevance and probative value of the documents requested in the City's motion, it is helpful to outline precisely what the City is requesting. The City and the Supporting Intervenors appear to be requesting information that properly informs a determination by the TSSA whether the SPPL meets the safety and technical standards of CSA Z662. The stated purpose of the City's motion is to obtain "disclosure [that] is needed to ensure that the pipeline is built and operated safely".⁴⁹ The City is asking for information it would otherwise be precluded from receiving under a TSSA audit of the SPPL. That is not consistent with the role of a responsible intervenor.
45. Simply put, the requested information will not assist any of the parties in their submissions to the Board, or in pursuing their own mandates outside of the leave to construct application process.
46. First, the City has requested "[t]he complete results of all audits, whether internal or external, conducted of Imperial's Safety and Loss Management System program, including Imperial's response to these audits."⁵⁰ The TSSA requirement for a safety and loss management program is met through OIMS. OIMS is a company-wide business practices program which Imperial uses to ensure its operations are governed by appropriate policies.⁵¹ Imperial has offered to produce on a confidential basis its SLMS framework which outlines how Imperial meets the requirements of the Safety and Loss Management System through a robust application of the OIMS framework. This document maps the required elements of CSA Z662 to the corresponding OIMS elements.
47. Second, the City has requested "[a] copy of Imperial's Integrity Management Program as required by CSA Z662-15 Clause 3.1.2 (f and v) and Clause 3.2, and complete details of all audits, whether internal or external, conducted of this Program including Imperial's

⁴⁸ See e.g. [EB-2018-0097](#), Decision and Order (3 January 2019) at p. 9; [EB-2018-0108](#), Decision and Order (29 November 2018) at pp. 3–4; [EB-2018-0003](#), Decision and Order (17 May 2018) at p. 6; [EB-2017-0180](#), Decision and Order (28 September 2018) at p. 10; [EB-2017-0118](#), Decision and Order (23 June 2017) at p. 8.

⁴⁹ [Toronto Supplementary Submissions](#) at p. 1.

⁵⁰ [Procedural Order No. 5](#) at p. 2.

⁵¹ EB-2019-0007, [Interrogatory Response from Applicant](#) (6 August 2019), at p. 39, IRR 25.4 and Appendix 6.

response”.⁵² This information falls within the jurisdiction and expertise of the TSSA. The TSSA has been provided with and is currently reviewing all required documentation associated with the Project and is working with Imperial to ensure that the Project meets all applicable standards. The TSSA has confirmed that the documents submitted by Imperial meet the requirements of O. Reg 210/01 and the Code Adoption Document⁵³ and Imperial has offered to provide, on a confidential basis, the 2018 TSSA Audit Report of Imperial’s SPPL Integrity Management Program.

48. Third, the City has requested “[t]he complete risk analysis performed on the existing line, and on the proposed replacement line indicating where consequence levels may have changed between the existing and proposed pipelines”.⁵⁴ Any risk analyses of the existing pipeline are entirely irrelevant—the Project is not proposing to re-use or adopt any of the original line for continued use.⁵⁵ The TSSA has confirmed that the Project will be built to the latest technology and material standards with conservative wall thickness and provide for increased depth of cover and high-quality external coating and that a complete risk assessment will be submitted for review prior to construction.⁵⁶ Imperial has offered to produce, on a confidential basis, Imperial’s preliminary risk assessment for the Project; and the results of Imperial’s final risk assessment for the Project, upon final submission to the TSSA.
49. Furthermore, the requested information will not assist the City or the Supporting Intervenors, working in conjunction with the TSSA and other regulators (e.g., the Ministry of Environment, Conservation and Parks), in protecting public safety in the unlikely event of a spill or other incident. Imperial has provided robust information to the City and the Supporting Intervenors to assist them in this capacity and has committed to continuing to work to ensure emergency preparedness for all interested parties.⁵⁷
50. The City has the information it needs to make submissions and the information requested will not assist it in making submissions or, as it suggests in its supplementary motion materials, protecting public safety or managing risk.

⁵² [Procedural Order No. 5](#) at p. 3.

⁵³ EB-2019-007, [TSSA Letter](#).

⁵⁴ [Procedural Order No. 5](#) at p. 3.

⁵⁵ The Credit River and Finch West Light Rail Transit crossings were replaced within the last year and are currently operating connected to the existing line. These sections will be tied into the new line and will not be replaced.

⁵⁶ EB-2019-007, [TSSA Letter](#).

⁵⁷ EB-2019-0007, [Interrogatory Response from Applicant](#) (6 August 2019) at IRR 29.4 and Appendix 4 – Site Specific Emergency Response Plans. As outlined in IRR 29.4(g) and (h), Imperial is committed to regular touchpoints with staff in the Toronto’s Office of Emergency Management and other appropriate Toronto staff to review Toronto’s emergency plans with a focus on Imperial infrastructure and emergency management and to sharing details of, and periodic invitation of Toronto emergency staff to observe and/or participate in, its pipeline-related training exercises.

C. The Information Sought is Disproportionate and the City's Requests are Prejudicial to Project Timelines

51. The City is effectively requesting that the OEB impose an additional step in the regulatory process, requiring Imperial to provide open-ended, rolling, and exhaustive responses to the City's requests for information until the City is satisfied. This is not consistent with the established leave to construct process and is beyond the scope of a responsible intervenor's role before the OEB.
52. The City has been granted extensions to the OEB's timelines. As evidenced by Imperial's letters of August 30 and September 18, Imperial sought extensions "in consideration of all intervenors of record" to extend the timeline for the delivery of the Intervenors' written submissions, in part to work with the City to provide appropriate information to the City outside of the OEB process.⁵⁸
53. The leave to construct process is not meant to be indefinite. The OEB recognized in Procedural Order No. 4 the need to balance the interests of the Intervenors with the impact to Imperial's construction timelines.⁵⁹ As Imperial has noted, particularly in the Imperial August 13 Letter, the OEB leave to construct is only one aspect of Project progression and further delays in the OEB leave to construct process puts at risk the Project schedule and associated commitments.⁶⁰
54. The City waited to submit its Notice of Motion until just before the (already extended) submission deadline, to the significant prejudice of Imperial and its Project and construction timelines. It is worth noting that the City's original request for an extension was based on the need for additional time to adequately review "approximately 1,199 pages of responses to interrogatories [provided] by Imperial on August 6, 2019".⁶¹ Despite this, the City now requests more information and further delays.

⁵⁸ [Imperial August 30 Letter](#) at p. 1; [Imperial September 18 Letter](#) at p. 1.

⁵⁹ [Procedural Order No. 4](#) at p. 4.

⁶⁰ [Imperial August 13 Letter](#) at p. 1.

⁶¹ [Toronto August 9 Letter](#) at p. 1.

D. Imperial Has Complied with All Procedural Orders

55. The City argued in its submission of October 17 that the production of the requested information was specifically mandated by Procedural Order No. 4, referring to the OEB’s direction to “file with the OEB and deliver to all intervenors information referenced in the City of Toronto’s letter dated August 14, 2019 related to certain interrogatories by August 23, 2019”.⁶² Procedural Order No. 4 did not mandate the production of the requested information. Imperial has complied with all production orders.
56. The Toronto August 14 Letter did not refer to any specific or particularized “information”. Furthermore, Imperial delivered the Imperial August 23 Letter in accordance with Procedural Order No. 4, advising, *inter alia*, that Imperial would work with the City to provide it with sufficient information in a timely manner and proposing to update the OEB on the information provided to the City at the time of the written notice of the commencement of construction. No comments or objections were received from any Intervenor, including the City, in response to the Imperial August 23 Letter.
57. At most, a fair characterization of the OEB’s direction in Procedural Order 4 was for Imperial to continue working with and accommodating the City’s requests for information, within reason. As noted above, Imperial responded in accordance with the OEB’s direction.
58. When issuing its direction in Procedural Order No. 4, the OEB could not possibly have intended to require Imperial to provide open-ended, rolling, and exhaustive responses to the City’s demands for information until the City, in its sole discretion, was satisfied. As noted above in paragraph 53, the OEB ruled explicitly on the need to balance providing the City with a reasonable amount of time to prepare final submissions with the impact on Imperial’s construction schedule.⁶³
59. Prior to submitting its Notice of Motion, the City had not particularized any deficiencies in Imperial’s interrogatory responses before the OEB. Neither the Toronto August 9 Letter nor the Toronto August 14 Letter refer to any specific missing documents or any unaddressed interrogatories. Neither letter purported to be a motion seeking direction from the OEB pursuant to Rule 27.03 of the *Rules of Practice and Procedure*. As such, Imperial has not had any reason, let alone opportunity, to discuss the appropriateness or need for disclosure of any particular information or document before the OEB, and the OEB has also not had the opportunity to consider such issues.
60. The extraordinary relief requested by the City disregards the impact to Imperial’s construction timeline and demands that the OEB require Imperial to provide the City with information that is not relevant to it.

⁶² [Procedural Order No. 4](#) at p. 4.

⁶³ *Ibid* at p. 4.

PART IV - CONCLUSION AND ORDERS SOUGHT

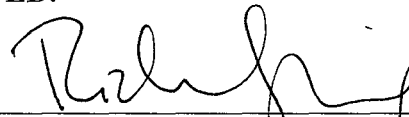
61. The information requested by the City is not relevant to its role as an intervenor on a leave to construct application, yet the City continues request procedural extensions to indefinitely draw out the leave to construct process and demand actions beyond those mandated by the Environmental Guidelines or which are proper at the leave to construct stage.
62. Imperial has pursued its application in accordance with the Environmental Guidelines and has worked through the OPCC process to respond to requests for information. Imperial has filed thousands of pages of evidence and responses to interrogatories. Imperial has worked for months with the City of Toronto throughout the OEB process to provide additional information and respond to inquiries. Imperial has supported numerous extensions to the timelines established by the OEB in order to allow for meaningful review by the Intervenors and engagement on the issues. All parties have enough information to make submission to assist the Board in determining whether the Project is in the public interest.
63. While the City, as an intervenor, may properly submit evidence, arguments, or interrogatories, it may not use its role as an intervenor to attempt to step into the shoes of the TSSA and indefinitely extend the leave to construct application process. An indefinite interrogatory process does not respect the balance the OEB identified as necessary in Procedural Order 4, particularly where the information is not relevant to the City as an intervenor.
64. Imperial is prepared to file the following information, on a confidential basis, before the Board if so directed:
 - (a) Imperial's Safety and Loss Management System Framework which outlines how Imperial meets the requirements of the SLMS through a robust application of the Operations Integrity Management System Framework. This document maps the required elements of CSA Z662 to the corresponding OIMS elements;
 - (b) 2018 TSSA Audit Report of Imperial's SPPL Integrity Management Program;
 - (c) Imperial's preliminary risk assessment for the Project; and
 - (d) the results of Imperial's final risk assessment for the Project, upon final submission to the TSSA (i.e., when available).
65. Upon provision of the above documents (if so directed) that are currently available, Imperial expects and respectfully requests that the OEB provide for an expeditious schedule for written submissions consistent with paragraph 67 below.
66. Imperial submits that its proposed timeframes for the remaining steps in this proceeding are consistent with the fact that the City filed its Notice of Motion one business day before the previous deadline for OEB Staff and Intervenor submissions, and the results of this

motion should not materially change the content of those submissions.⁶³ Additionally, Imperial will require a reasonable amount of time to respond to the Intervenors' final submissions.

67. For the reasons set out above, Imperial respectfully submits the OEB should:
- (a) dismiss the City's motion;
 - (b) order that OEB Staff and intervenors file written submissions with the OEB and serve it on Imperial and all intervenors within five business days following the Board's order; and
 - (c) order that Imperial may file a written reply submission with the OEB and serve it on all intervenors within fifteen business days following the deadline for submissions of OEB Staff and intervenor submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

October 28, 2019



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⁶³ Indeed, the City of Mississauga already filed its final submissions on September 30, 2019, as did the Region of Peel on October 15, 2019.