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October 31, 2019

Ontario Energy Board
2300 Yonge Street, 27th floor
P.O. Box 2319
Toronto, ON M4P 1E4
Attn: Kirsten Walli, Board Secretary

Sent via email to: boardsec@oeb.ca

Dear Ms. Walli:

**Re: Imperial Oil Limited Application Number EB-2019-007 for Leave to Construct –
Waterdown to Finch Project (the "Project")**

Please find below the reply submissions of the City of Toronto, pursuant to Procedural Order No. 5, and further to the motion submissions of Imperial Oil.

Summary

Toronto is seeking disclosure needed for the thorough, transparent, and complete assessment of Imperial's application. The disclosure relates to standard Board considerations, including impacts on landowners and the environment. The Technical Standards & Safety Authority ("TSSA") statutory mandate is distinct and narrower than the Board's public interest test. TSSA review is welcome but not relevant to this motion.

Toronto wishes for a fair and efficient conclusion of this matter, on the basis of a full record. Imperial has delayed this. Toronto has repeatedly sought the disclosure from Imperial, and relied on Imperial's repeated assurances that it would work cooperatively towards providing requested information. Imperial delayed providing same. On October 10, 2019—three business days before the Intervenor's submissions deadline—Imperial abruptly refused to provide requested audits and risk assessments. Toronto filed its motion that same day. Imperial's submission, while complaining of delay, requests nearly two weeks of additional time for Imperial's final reply submissions beyond the period specified in Procedural Order No. 4.

Imperial's proposed disclosure—which it refused to provide to the Board until Toronto was forced to bring this motion—is insufficient and high-level. Imperial has failed to discharge its onus in explaining why these filings should be confidential. Nonetheless, in the interest of cooperation, Toronto does not object to the documents being filed confidentially provided that

they may be accessed by Toronto and all municipal intervenors. Toronto reiterates its request for the disclosure particularized at page 5 of these submissions.

The Disclosure is Relevant to Landowner and Environmental Matters

As conceded by Imperial:

- 1) its application is to be considered with regard to the public interest¹, and;
- 2) in so doing, the Board typically examines factors including impacts on landowners and the environment².

Toronto reiterates its October 10, 2019 submissions that the disclosure is needed for the thorough, transparent, and complete assessment of Imperial's application, including assessing risks and providing submissions on appropriate conditions of approval. The requested disclosure is directly relevant to environmental impacts, landowner concerns, and the public interest generally.

Toronto—and the supporting municipal intervenors—are landowners with collectively billions of dollars in municipal infrastructure along the route of the pipeline. Risk assessments and audits are also relevant to potential spills and pipeline emergencies, which in turn are significant landowner and environmental concerns. Indeed, Imperial's Response to Interrogatories states that "[c]omprehensive risk assessments can reduce safety, health, environmental and security risks and mitigate the consequences of incidents by providing essential information for decision-making" [emphasis added].³

TSSA Review is not Relevant to this Motion

Technical Standards & Safety Authority ("TSSA") review of Imperial's proposed pipeline is welcome, but is not relevant to this motion. The separate role of the TSSA weighs in favour of ordering the disclosure.

The *Ontario Energy Board Act, 1998* provides that Imperial's application is to be assessed with regard to the public interest.⁴ The TSSA has a distinct, narrower statutory mandate for the "efficient and flexible administration of technical standards with respect to... amusement devices, boilers and pressure vessels, elevating devices, fuels, and operating engineers".⁵ Environmental matters and landowner concerns are outside this mandate.

Existing Risk Assessments are Relevant

Imperial's submissions claim that existing risk analyses are irrelevant, since the proposed pipeline will not reuse the original line. However, Imperial's application states that "the new

¹ EB-2019-007, Motion Submissions of Imperial Oil Limited at para. 36 [*Imperial Submissions*]; *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, s. 96 [*OEBA*].

² *Imperial Submissions, supra*; EB-2018-0263, Decision and Order at p 5.

³ Proponent's Response to Information Requests on the Waterdown to Finch Pipeline Application, Appendix 6, p. 6 of 20.

⁴ *OEBA, supra* note 1 at s. 96.

⁵ *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16 at ss. 1-2.

pipeline will be constructed following the existing SPPL route as closely as possible."⁶ Both pipelines have the same start and end points, cross identical watercourses, and are components of the same SPPL system. Imperial has repeatedly boasted of the existing pipeline's safety record, presumably because it sees the operation of the existing pipeline as relevant to future operations.⁷ Toronto concurs, and reiterates its request for the existing risk assessments.

Imperial appears to concede that the final risk assessment for its proposed pipeline has not been completed.⁸ This is confirmed in the second paragraph of the TSSA letter submitted by Imperial.⁹ To Toronto's knowledge, this is the first such confirmation by Imperial to the Board. Imperial's non-completion of a risk assessment for the proposed pipeline heightens the need for disclosure of available, existing risk assessments.

Imperial is Responsible for Delay

Toronto wishes for a fair and efficient conclusion of this matter, on the basis of a full record. Imperial's actions have delayed this. Toronto has requested the disclosure from Imperial, in its July 12, 2019 interrogatories and thereafter. Toronto had hoped to receive the disclosure quickly and on consent. Regrettably, this has not happened.

On August 23, 2019, Toronto wrote to Imperial to advise that it was contemplating a disclosure motion but preferred to work collaboratively with Imperial. Thereafter, Toronto relied on the assurances of Imperial that it would make sufficient disclosure. Imperial subsequently requested several extensions to the application timeline, which Toronto consented to but did not initiate.

On October 10, 2019—three business days before Toronto's final submissions were due—Imperial abruptly refused to provide requested audits and risk assessments. At no time between Imperial's Response to Interrogatories and this date had Imperial made this refusal. To the contrary, it had repeatedly assured Toronto that it would work collaboratively in providing disclosure.

The following events are noteworthy:

- 1) Imperial, in its letter of August 13, 2019, indicated that it was "committed to meaningful engagement and to fully address all questions and concerns from the City of Toronto" [emphasis added].¹⁰
- 2) On August 14, 2019, Toronto wrote to the Board to advise that "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".¹¹

⁶ Imperial Oil, Waterdown to Finch Project: Application for Leave to Construct (Updated), Exhibit C dated March 15, 2019, at p. 1 of 4.

⁷ See e.g. *Imperial Submissions* at para. 1.

⁸ *Ibid* at para. 10(d).

⁹ Kourosh Manouchehri, Technical Standards & Safety Authority, Waterdown to Finch Project dated October 25, 2019.

¹⁰ Imperial Oil, Letter re: EB-2019-0007 – Imperial Oil Limited Application for leave to construct the Waterdown to Finch Project, dated August 13, 2019.

¹¹ City of Toronto, Letter re: Imperial Oil Limited Application Number EB-2019-007 for Leave to Construct – Waterdown to Finch Project (the "Project"), dated August 14, 2019.

- 3) On August 20, 2019, the Board issued Procedural Order No. 4, granting an extension and requiring Imperial to file the information referenced in Toronto's August 14, 2019 letter.¹²
- 4) On August 23, 2019, Imperial wrote to the Board to advise that, *inter alia*, "with respect to the requested information, Imperial will meet all safety requirements of the Technical Standards and Safety Authority (TSSA). Imperial also acknowledges the importance of the information to the municipality and is committed to working with the City of Toronto directly to provide it with sufficient information" [emphasis added].¹³
- 5) On August 23, 2019 and in response to Imperial's letter of the same date, Toronto wrote to Imperial to note that TSSA audits and risk analyses had not yet been provided, and that this was in Toronto's view a violation of Procedural Order No. 4. Toronto indicated that, if the disclosure was not provided shortly, a motion to the Board was possible, but that it hoped to receive the disclosure and work collaboratively with Imperial.
- 6) On August 27, 2019, Imperial wrote to Toronto to indicate that it would "work through the requests and provide an update and/or documents as soon as [it is] able".
- 7) On August 30, 2019, Imperial wrote to the Board to request an extension to the application timelines, and stated that "[t]his additional time will be used to work directly with the City of Toronto on various matters including requested information".¹⁴
- 8) On September 11, 2019, Imperial wrote to the City to indicate that it was "working on the risk assessment documentation request", but that this was taking time, that it would provide a further update shortly on what documentation will be ready, and that once it knew when the documentation would be available, it would review the application timeline and "extend accordingly".
- 9) On September 18, 2019, Imperial again wrote to the Board to request an extension to the application timelines, and stated that "[t]his additional time will be used to work directly with the City of Toronto on various matters including requested information".¹⁵
- 10) On October 10, 2019, Imperial wrote to the City to refuse to provide the requested disclosure.
- 11) Also on October 10, 2019, Toronto immediately commenced this motion.

Toronto notes that Imperial's submission, while complaining of delay, requests a nearly two-week extension for Imperial's final reply submissions beyond the period specified in Procedural Order No. 4.¹⁶ Toronto respectfully notes that a Board order for Imperial to provide the requested disclosure within a week may address any timeline concerns.

¹² Ontario Energy Board, Procedural Order No. 4, dated August 20, 2019 [*Procedural Order No. 4*].

¹³ Imperial Oil, Letter re: Response to Procedural Order No.4 and Decision on Confidentiality Request, Imperial Oil Limited – Waterdown to Finch Project Application, Ontario Energy Board File Number: EB-2019-0007, dated August 23, 2019.

¹⁴ Imperial Oil, Letter re: Procedural Order No. 4 Extension Request, Imperial Oil Limited – Waterdown to Finch Project Application, Ontario Energy Board File Number: EB-2019-0007, dated August 30, 2019.

¹⁵ Imperial Oil, Letter re: Request for Procedural Order Schedule Extension, Imperial Oil Limited – Waterdown to Finch Project Application, Ontario Energy Board File Number: EB-2019-0007, dated September 18, 2019.

¹⁶ *Procedural Order No. 4*, *supra* note 12 at p. 4; *Imperial Submissions*, *supra* note 2 at para. 9(c).

Imperial's Proposed Disclosure is Insufficient

Imperial's proposed disclosure—which it refused to provide to the Board until Toronto was forced to bring this motion—is necessary but insufficient. The "Framework" described in paragraph 10(a) of Imperial's submissions appears to be a general, high-level summary. A "preliminary risk assessment" is insufficient. Imperial has offered no information on how incomplete its "preliminary risk assessment" may be, whether it contains necessary elements such as probability and consequence analysis, *etc.* The paragraph 10(d) reference to "the results of" a final risk assessment leaves open the possibility that Imperial may provide a summary of the risk assessment, rather than the document itself.

Confidential Filing

Imperial has not followed the Board's Practice Direction on Confidential Filings, and in particular has failed to discharge its onus in explaining why these filings should be confidential. Nonetheless, in the interest of cooperation with Imperial, Toronto does not object to the documents being filed confidentially provided that they may be accessed by Toronto (including its counsel, internal staff, and external expert) and all municipal intervenors.

Conclusion and Relief Requested

Toronto respectfully requests that the Board order that Imperial disclose:

- 1) 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;
- 2) 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;
- 3) 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.

The disclosure must in Toronto's view be full and complete, rather than simply high-level summaries. Toronto further requests that the deadline for intervenors' submissions be extended to 14 days from when the disclosure is provided by Imperial.

Yours truly,



Nicholas Rolfe
City of Toronto, Legal Services