

Toronto

November 18, 2019

Montréal

Richard King
Direct Dial: 416.862.6626
rking@osler.com
Our Matter Number: 1184765

Calgary

Sent by Electronic Mail and by Overnight Courier and Filed Electronically on RESS

Ottawa

Christine Long
Board Secretary and Registrar
Ontario Energy Board
27th Floor - 2300 Yonge Street
Toronto, Ontario M4P 1E4

Vancouver

New York

Dear Ms. Long:

EB-2019-0007 – Application for Leave to Construct the Waterdown to Finch Pipeline

Re: Request for Confidential Treatment of Information to be Filed Pursuant to Ontario Energy Board Decision and Order of November 14, 2018

In Imperial Oil Limited's ("**Imperial**") Motion Reply Submission dated October 28, 2019 in the above file, Imperial offered to file with the Ontario Energy Board ("**OEB**" or "**Board**") certain documents if directed by the Board.

In its Decision and Order dated November 14, 2019 (the "**Order**"), the Board ordered that Imperial file the following documents with the OEB:

- (a) Imperial Oil's Safety and Loss Management System Framework (the "**SLMS Framework**");
- (b) 2018 TSSA Audit Report of Imperial Oil's Sarnia Products Pipeline Integrity Management Program (the "**2018 TSSA Audit Report**"); and
- (c) Imperial Oil's preliminary risk assessment for the Project (the "**Preliminary Risk Assessment**").

In accordance with Rule 10 of the OEB's *Rules of Practice and Procedure*, the OEB's *Practice Direction on Confidential Filings* (the "**Practice Direction**"), and the Order, Imperial requests confidential treatment for the SLMS Framework, the 2018 TSSA Audit Report and the Preliminary Risk Assessment (collectively, the "**Confidential Documents**").

In accordance with Rule 5.1.4(b) of the Practice Direction, a confidential, unredacted version of each of the Confidential Documents will be filed with the OEB along with this letter.

While the Order directs Imperial to deliver redacted versions of the Confidential Documents to all intervenors in this matter, for the reasons set out below, Imperial's request for confidentiality relates to the entirety of each of the Confidential Documents. As such, pursuant to Rule 5.1.4(c) of the Practice Direction, a non-confidential description or summary of each of the Confidential Documents is set out below:

- (a) The **SLMS Framework** provides an outline of how Imperial meets the safety and loss management system requirements contained in CSA Z662-15 Clause 3 through a robust application of the company's Operations Integrity Management System (OIMS). This document maps the required elements of CSA Z662 to the corresponding OIMS elements;
- (b) The **2018 TSSA Audit Report** is a report prepared by the Technical Standards and Safety Authority ("TSSA") to document the December 2018 TSSA audit of Imperial's Integrity Management Program of the Sarnia Products Pipeline ("SPPL"). The Waterdown to Finch segment of the SPPL was included in the scope of this audit. This report contains a summary of the TSSA's assessments, observations and recommendations; and
- (c) The **Preliminary Risk Assessment** focuses on the identification of hazards and controls or mitigations applicable to the design and construction phases of the proposed pipeline's lifecycle in accordance with CSA Z662-15. This preliminary document will be used as a basis for the final risk assessment for the proposed pipeline.

Reasons for Confidential Treatment of the SLMS Framework

The SLMS Framework is, in its entirety, commercially sensitive and, if released, would seriously impact Imperial's competitive position as it represents the foundation of Imperial's commitment to managing risk and assists in achieving safety and environmental objectives. The SLMS Framework contains commercial material that is consistently treated in a confidential manner by Imperial. Imperial has invested significant resources in the development of the SLMS Framework, and as such, the release of this information and subsequent potential use by a third-party competitor would likely produce a significant gain to any such competitor and corresponding significant loss to Imperial.

Reasons for Confidential Treatment of the 2018 TSSA Audit Report

The TSSA Audit contains proprietary technical information. The OEB has routinely accorded confidential treatment of commercially sensitive and proprietary technical information, particularly where such information relates to a utility's safety systems on the basis that disclosure would likely adversely affect a proponent's competitive position and could be reasonably expected to cause significant loss.

The TSSA Audit was drafted by the TSSA on the basis of, and contains extensive references to, records, reports and statements obtained under the powers conferred to the TSSA the under the *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16 (the “**TSSA Act**”). Section 24 of the TSSA Act mandates that such information be treated as confidential by the TSSA. The mandatory treatment of this information as confidential by another regulator is indicative of its commercially sensitive nature.

Reasons for Confidential Treatment of the Preliminary Risk Assessment

The Preliminary Risk Assessment contains commercially sensitive and proprietary information which would, if disclosed, affect the competitive position of Imperial and third parties. The Preliminary Risk Assessment contains commercial, scientific, and technical material that is consistently treated in a confidential manner by Imperial. The Preliminary Risk Assessment was prepared in accordance with the TSSA’s project review and was submitted under the confidentiality guarantee of the TSSA Act, as described above.

Conclusion

Should the OEB grant Imperial’s request for confidentiality, Imperial proposes that the OEB order the documents be disclosed, subject to any conditions the OEB may find appropriate, to only those persons that by then have already signed, or that subsequently sign, the form of Declaration and Undertaking attached to the Practice Direction.

While reserving all rights, Imperial does not anticipate objecting to any Intervenor’s request to access the Confidential Documents at this time (provided that each Intervenor representative has executed a copy of the OEB’s Declaration and Undertaking).

Finally, Imperial submits that the Confidential Documents all relate to matters primarily within the jurisdiction of the TSSA and will be taking that position with respect to each of the Confidential Documents’ relevance and materiality in Imperial’s final written submissions.

Sincerely,



Richard King

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