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BY EMAIL

December 31, 2019

Nicholas Rolfe  
Legal Services  
City of Toronto  
55 John Street  
Toronto ON M5V 3C6

Dear Mr. Rolfe:

**Re: Evidence Filing by the City of Toronto  
Imperial Oil Limited- Waterdown to Finch Project Application  
Ontario Energy Board File Number: EB-2019-0007**

On December 13, 2019, the Ontario Energy Board (OEB) received a brief of documents (Documents) from the City of Toronto. The City of Toronto labeled the Documents as “evidence”. The City of Toronto stated that it anticipates referring to the Documents in its written submissions and reserves the right to file additional documents.

On December 20, 2019 Imperial Oil Limited (Imperial Oil) filed a letter stating that the Documents are not properly evidence and requesting that the Documents be removed from the record of the proceeding. Imperial Oil argued that the Documents are not relevant to the proceeding and noted that the City of Toronto did not seek OEB’s advance approval to file the evidence. Imperial Oil also noted that that its prospective filing of updated consultation logs is not akin to filing the evidence and should not be taken as a cue by the City of Toronto to file the Documents as evidence.

On December 23, 2019 the City of Toronto responded to Imperial Oil’s objection stating it is premature for Imperial Oil to request that the OEB adjudicate on the relevance of the Documents. The City of Toronto maintained that the Documents are necessary for its presentation of the case. The City of Toronto also indicated that the Documents are non-controversial in nature, that many of the Documents were referenced in its interrogatories and that the review of the Documents would not further extend the proceeding.

The OEB has determined that the Documents are not properly considered “evidence” for the purpose of this proceeding.

Many of the documents were not prepared by or for the City of Toronto, and are not directly related to the proposed project. Those documents that were prepared by or for the City of Toronto also do not relate directly to the proposed project. They are generally documents that appear to be in the public domain. It is not clear that any of these documents are directly relevant to the issues that are before the OEB in this proceeding.

The OEB did not make provision for intervenor evidence nor did it receive a request for the same until the Documents were filed by the City of Toronto. The OEB finds that accepting the Documents as “evidence” would necessitate the provision of some form of discovery by other parties and the OEB does not see a compelling reason to delay this proceeding. As most of the documents were not prepared by or for the City of Toronto, there is no meaningful way that discovery could take place in any event. The provision of this additional information is not the same as allowing Imperial Oil to file updated consultation logs, which was requested by the OEB as an update to evidence that is already on the record.

The OEB generally takes a permissive approach to the types of materials that parties can refer to as part of their final argument. Depending on relevance and reliability, the OEB will sometimes consider documents such as reports that may have been filed in other proceedings. It will also generally allow reference to OEB issued documents, even if those documents have not been filed on the record. Indeed in a written hearing there is not always an obvious forum in which to separately file these types of documents. To the extent that it can show that they are relevant, there may be some limited role for these documents in the City of Toronto’s final argument. Without knowing the purpose for which the City of Toronto intends to use the documents, the OEB will not say at this point that the documents cannot be referred to. However, they will not be considered as stand alone evidence.

The OEB notes that the submissions schedule outlined in Procedural Order No. 6 shall remain unchanged.

Please direct any questions relating to this application to the Case Manager, Zora Crnojacki at [zora.crnjacki@oeb.ca](mailto:zora.crnjacki@oeb.ca) and OEB Counsel, Michael Millar at [Michael.Millar@oeb.ca](mailto:Michael.Millar@oeb.ca).

Yours truly,

*Original Signed By*

Christine E. Long  
Registrar and Board Secretary

c: All parties in EB-2019-0007 proceeding