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**BY EMAIL**

January 24, 2020

Christine Long  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
[BoardSec@oeb.ca](mailto:BoardSec@oeb.ca)

Dear Ms. Long:

**Re: Ontario Energy Board (OEB) Staff Submission  
Imperial Oil Limited - Waterdown to Finch Project Leave to Construct  
Application  
OEB File Number: EB-2019-0007**

In accordance with the schedule set in Procedural Order No. 6 dated December 6, 2019, please find attached the OEB staff submission in the above proceeding. The attached document has been forwarded to Imperial Oil Limited and to all other registered parties to this proceeding.

Yours truly,

*Original Signed By*

Zora Crnojacki

Project Advisor, Natural Gas Applications

Encl.



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

### **Imperial Oil Limited Waterdown to Finch Project**

**Application for leave to construct the Waterdown to Finch Project in the City of Hamilton,  
the City of Burlington, the Town of Milton, the Town of Oakville, the City of  
Mississauga and the City of Toronto**

**EB-2019-0007**

**January 24, 2020**

## INTRODUCTION

Imperial Oil Limited (Imperial Oil) applied under section 90(1) of the *Ontario Energy Board Act, 1998* (OEB Act) for leave to construct (LTC) 63 kilometers of 12-inch diameter pipeline for transportation of refined petroleum products from its facility in the City of Hamilton to its facility in the City of Toronto (Project).

A map of the general route for the Project is included in Appendix A.

Imperial Oil also applied under section 97 of the OEB Act for approval of the forms of easement agreements related to the construction of the Project.

The Project will replace an existing pipeline constructed in the mid -1950's. The existing pipeline from Waterdown to Finch is a segment of Imperial Oil's Sarnia Products Pipeline (SPPL) that transports fuel products manufactured in Sarnia to the Greater Toronto Area. The existing pipeline will be decommissioned in place. Imperial Oil states that the Project will provide continuity of service and will maintain system integrity.

The Project is located in the City of Hamilton, the City of Burlington, the Town of Milton, the Town of Oakville, the City of Mississauga and the City of Toronto<sup>1</sup>. The Project route follows closely the route of the existing Imperial pipeline. The Project route will use part of the width of the existing right-of-way (ROW) and will need to expand the width of the existing ROW in certain areas. Construction of the pipeline is planned to last 8-10 months. Imperial Oil plans for an in-service date in late 2020.

Imperial Oil's evidence indicates that all required design specifications such as pipeline wall thickness and maximum operating pressure, and pipeline class location are in compliance with the Canadian Standards Association (CSA) CSA Z662-15 "Oil and Gas Pipeline Systems" (CSA Z 662).

OEB staff supports the OEB granting leave to construct approval to Imperial Oil for construction of the Project, subject to certain Conditions of Approval (see Appendix B). OEB staff has no concerns with the forms of easement agreements related to the construction of the Project and supports OEB approval under section 97 of the OEB Act.

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<sup>1</sup> The City of Burlington, the Town of Milton and the Town of Oakville are in the Region of Halton. The City of Mississauga is in the Region of Peel.

## PROCESS

Imperial Oil filed the application on February 25, 2019. Imperial Oil filed updates to its evidence on the purpose and need of the Project on March 15, 2019. On March 19, 2019 the OEB issued a letter acknowledging that the application is complete and that the OEB review had started.

The OEB issued a Notice of Hearing on April 11, 2019. The Notice was published as directed. At the end of April, Imperial Oil informed OEB staff that it needed more time for the service of the notice to certain landowners/encumbrancers identified by the title search along the proposed route. In order to give Imperial Oil adequate time to complete the service, the OEB held the application in abeyance until the service was completed. On May 24, 2019, Imperial Oil filed an affidavit with the OEB confirming service of the Notice of Hearing. The OEB re-started processing the application on that date.

The OEB issued Procedural Order No. 1 (PO No.1), on May 31, 2019 setting the schedule for a written hearing. No party requested an oral hearing.

The following parties are registered as intervenors in the proceeding: Canadian Manufacturers and Exporters (CME), City of Mississauga, City of Toronto, Halton Region, Huron Wendat Nation (HWN), Regional Municipality of Peel, Enbridge Gas Inc., Greater Toronto Airports Authority, Hydro One Networks Inc. and jointly Peter and Tim Virtanen. CME, HWN and Peter and Tim Virtanen are eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards*.

Bell Mobility Inc. and the City of Hamilton applied and were registered as intervenors but withdrew during the proceeding. The City of Hamilton filed a letter of comment on August 12, 2019. Imperial Oil responded to these comments on August 21, 2019. OEB staff reviewed the comments and the response, and will provide its view in appropriate sections of this submission.

Procedural Orders 2 through 6 established the process and timing for interrogatories, confidentiality requests, a motion filed by the City of Toronto, and submissions, and responded to a number of extension requests from both Imperial Oil and intervenors.

According to the schedule set in Procedural Order No. 6, Imperial Oil filed its Argument-in-Chief on January 10, 2020, written submissions from OEB staff and intervenors are due on January 24, 2020, and the reply submission from Imperial Oil is due on February 7, 2020.

## SCOPE OF THE OEB'S REVIEW

This is an application under section 90 of the OEB Act seeking an order for leave to construct a hydrocarbon pipeline. Section 96 of the OEB Act provides that the OEB shall make an order granting leave if the OEB finds that “the construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the OEB typically examines the need for the project and alternatives, the project cost and economics, the environmental impacts, Indigenous consultation, and land matters. The OEB typically attaches a number of conditions to its orders under section 90 of the Act. In this case, the OEB’s review does not include consideration of the Project cost and economics as Imperial Oil is not a rate-regulated entity, and the costs of the Project will therefore not be passed on to ratepayers through any OEB-approved rates.

In the course of this proceeding, intervenors have raised issues related to pipeline design, safety of operation, pipeline integrity, emergency response and management, and decommissioning of the pipeline. While OEB staff agrees that these issues are of critical importance, OEB staff’s view is that these issues are partially or entirely outside the regulatory oversight of the OEB. In Ontario, the Technical Standards Safety Authority and the Ministry of Environment, Conservation and Parks (MECP) have some level of oversight over these matters. The TSSA administers and enforces public safety laws under the authority granted to it by the *Technical Safety Standard Act, 2000 S.O. 2000, c. 16*, and *Ontario Regulation 210/01 (Oil and Gas Pipeline Systems)*.<sup>2</sup> The TSSA oversees pipeline design specifications, safety and emergency matters, integrity testing and monitoring, and decommissioning in accordance with the CSA Z662 code, a national standard that is adopted within Ontario legislation through O. Reg. 223/01 and the *Technical Standards and Safety Act*.

The proposed Imperial Oil pipeline has to be licenced by the TSSA pursuant to the Ontario Regulation 210/01, which requires that the TSSA licence and audit oil and gas pipelines in Ontario that are longer than 20 kilometres. The TSSA has confirmed, in a letter to Imperial Oil dated October 25, 2019, that it has selected the Project 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”.

OEB staff agrees with Imperial Oil’s position that “While technical standards are a

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<sup>2</sup> In its Decision and Order on Motion of the City of Toronto (November 14, 2019) the OEB recognized the importance of safe operation of a proposed oil pipeline but indicated that many of the safety and emergency response concerns raised by Toronto in its Motion appear to be under the jurisdiction and expertise of the TSSA.

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 standards.”<sup>3</sup>

OEB staff notes, that in addition to the TSSA’s oversight of the safe operation and design of the proposed pipeline, there are also separate requirements under the *Environmental Protection Act* with respect to spill prevention, spill reporting, spill management plans, spill amelioration, and related powers of the Minister of the Environment, Conservation and Parks.

Given this regulatory framework, the OEB’s approval of a leave to construct application under section 90 of the OEB Act is typically made conditional upon the applicant’s compliance with all applicable regulatory requirements, including those under the TSSA and Ministry of Environment, Conservation and Park’s mandate and legislation. As such, Imperial Oil will be required to satisfy the TSSA’s licence terms, pipeline design and safety specifications, pipeline integrity and emergency management requirements, including related to the risk of spills, and to meet all other applicable Provincial and Federal standards and regulations.

The City of Toronto, the City of Mississauga, and Halton Region (intervenors) in their interrogatories, and the City of Hamilton in a letter of comment, have expressed concerns and raised issues related to pipeline and valve design safety, pipeline integrity, emergency response plans, operational emergency response plans, spill prevention and fire safety, liability insurance, financial responsibility for emergency response, clean-ups in the event of a spill, and decommissioning of the existing pipeline. These parties asked that Imperial Oil provide specific and detailed information and commitments to ensure safe operation of the Project. Imperial Oil stated in response to interrogatories and in response to the City of Hamilton’s comments<sup>4</sup> that the pipeline design specifications, safety and emergency matters, integrity testing and monitoring, and decommissioning will follow all provincial regulations and national requirements<sup>5</sup>.

In addition, OEB staff notes that the City of Toronto, the City of Mississauga, Halton Region and the City of Hamilton requested that Imperial Oil collaborate with the municipalities when developing important Project-related plans and programs, such as the emergency response and fire safety program. Imperial Oil has stated that it is committed to continuing communication and cooperation with these entities, and that it will continue to work with the affected municipalities and other authorities to adhere to relevant municipal, provincial and national legal, regulatory and permitting

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<sup>3</sup> Imperial Oil Argument-in-Chief, January 10, 2020, paragraph 27, page 6.

<sup>4</sup> Imperial Oil responded to City of Hamilton letter of comment by way of letter dated August 21, 2019.

<sup>5</sup> Imperial Oil’s response to OEB staff interrogatory nos. 2 and 3

requirements to ensure safe operation of the Project. Imperial Oil contacted the TSSA and provided evidence on the record of its communication with the TSSA<sup>6</sup>.

OEB staff notes that there are a number of other permits and approvals that Imperial Oil requires for construction and operation of the proposed pipeline. Typically, conditions of approval under section 90 of the OEB Act include that the applicant provide a certification that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project<sup>7</sup>.

OEB staff's submission is organized as follows:

1. Need
2. Environmental Matters
3. Indigenous Consultation
4. Land Matters
5. Conditions of Approval

## **OEB STAFF SUBMISSION**

### **1. Need**

The purpose of the pipeline is to transport refined petroleum products used by households and businesses in the GTA and Hamilton areas, including supply of jet fuel for Toronto Pearson International Airport, as well as gasoline and diesel fuel for transportation in the region.

According to Imperial Oil, the replacement of the existing, six decade old pipeline, will ensure continuous safe and reliable transportation of fuel products such as diesel, gasoline and jet fuel.

The new 12 inch diameter proposed pipeline will replace the existing pipeline of the same diameter. Imperial Oil noted that the proposed pipeline is important infrastructure and Imperial Oil filed a number of letters in support of the need for the proposed pipeline project in its evidence.

Imperial Oil stated that the Waterdown to Finch segment of the SPPL has been operating safely for more than 60 years. The replacement of the Waterdown to Finch segment is a

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<sup>6</sup> EB-2019-0007 Evidence Exhibit H, Tab 1, Schedule 1, pages 26-27 and 40

<sup>7</sup> In this case, OEB staff proposes condition 5.a) v. in Appendix B to this submission. OEB staff notes that Imperial Oil agreed with this condition in response to OEB staff interrogatories.

proactive replacement as part of the ongoing integrity management program of the SPPL. In addition to ensuring continued safe and reliable pipeline operations, installation of the new pipeline includes benefits such as improved product availability for customers and reduced supply disruptions due to integrity and maintenance activities, as well as increased pipeline depth in sensitive areas. Imperial Oil stated that construction of the Project will contribute to the local and regional economy. Imperial noted that other possible options to replace the transportation capacity of the pipeline, such as truck transportation, are not suitable alternatives, as it would require 400 tanker trucks per day to provide transport of the equivalent volume of fuel.

Imperial originally planned to begin construction of the Project in December 2019. Construction is planned to last 8-10 months, plus approximately 1 month for commissioning. Imperial Oil anticipated a late 2020 in-service date. According to the project schedule, Imperial Oil expected OEB approval in the 3<sup>rd</sup> quarter of 2019. However, due to the complexity of issues and concerns raised by parties in the proceeding, OEB approval is now expected in the 2<sup>nd</sup> quarter of 2020. OEB staff expects that Imperial Oil keeps an updated Project Milestone schedule and that any update will be filed on the record.

#### Project Milestones<sup>8</sup>

|                                  |                |
|----------------------------------|----------------|
| Expected LTC approval            | Q3 2019        |
| Receipt of permits and approvals | Q3 2019        |
| Commence construction            | Q4 2019        |
| Completion of construction       | Q3 2020        |
| Complete hydrostatic testing     | Q3 2020        |
| Commissioning                    | Q4 2020        |
| Final inspection                 | Q4 2020        |
| Line in-service                  | Q4 2020        |
| Site restoration                 | Q3 and Q4 2020 |

#### **OEB Staff Submission**

Given the evidence provided by Imperial Oil, OEB staff agrees that there is a need for the Project.

Regarding the projected in-service date, OEB staff expects that Imperial Oil file a revised Project Milestones schedule and comment on any changes to the planned in-service date

<sup>8</sup> EB-2019-0007 Evidence Exhibit E, Tab 1, Schedule 6, page 1 of 2



of the 4<sup>th</sup> quarter of 2020.

## 2. Environmental Matters

Selection of a route, environmental assessment, mitigation and monitoring of impacts during construction and operation of a pipeline requiring approval by the OEB under section 90 of the OEB Act are guided by the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (7th Edition, 2016) (OEB Environmental Guidelines). The OEB Guidelines prescribe the process for a review of the proposed pipeline project environmental assessment report, including a review of the proposed route, by the Ontario Pipeline Coordinating Committee (OPCC). The OPCC is comprised of government agencies, provincial ministries, local municipalities and conservation authorities that have an interest and regulatory authority over environmental and socio-economic aspects of the proposed pipeline projects. The purpose of the OPCC is to coordinate the Ontario government agencies' review of pipeline projects requiring approval by the OEB and to provide a single contact for identifying issues and concerns related to the proposed pipeline. The OPCC review facilitates a process for approvals and permits to be granted to the proponents of pipelines that seek leave to construct under section 90 of the OEB Act.

Imperial Oil has been conducting the environmental assessment, routing, and stakeholder consultation in accordance with the OEB Environmental Guidelines.

Imperial Oil retained ERM Consultants Canada Ltd. (ERM) to conduct an environmental assessment and prepare an Environmental Report (ER) on the Project. The ER was filed with the application<sup>9</sup>.

ERM completed a study to select a preferred route for the proposed pipeline and to identify any potential environmental and/or socio-economic impacts. ERM was also asked to develop mitigation measures to minimize environmental and socio-economic impacts.

The preferred route was selected based on the assessment of two alternative routes. Both alternatives followed the existing pipeline route for 18.8 kilometres. The preferred route alternative, among other comparative advantages, follows the existing pipeline along its entire length, is 14 kilometers shorter, and has fewer wetland and stream crossings<sup>10</sup>.

On February 1, 2019, Imperial Oil distributed the ER to the members of the OPCC, affected conservation authorities, municipalities and Indigenous communities for review

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<sup>9</sup> Evidence (EB-2019-0007) Imperial Oil, Waterdown to Finch Environmental Report, February 1, 2019, filed February 25, 2019.

<sup>10</sup> Evidence (EB-2019-0007) Exhibit D, Tab 1, Schedule 1, pages 1-2: Route Selection.

and comments.

Imperial Oil documented issues and concerns raised in the process of the ER review by the OPCC and other consulted entities in the Record of Consultation Log. The Record of Consultation Log specifies Imperial Oil's responses and proposed actions to address issues and concerns, and to mitigate impacts. The Record of Consultation Log covers the consultation and communication with all stakeholders, including: Indigenous communities, the Metis Nation of Ontario, OPCC members, conservation authorities and municipalities. In response to interrogatories, Imperial Oil updated the comments it has received as part of the OPCC review, including the dates of communication, the issues and concerns identified by the parties, and Imperial Oil's responses and actions to address these issues and concerns.<sup>11</sup>

Huron-Wendat Nation (HWN) and the Mississaugas of the Credit First Nation (MCFN) expressed concerns about Imperial Oil's archaeological assessment. HWN's concerns related to the Imperial Oil's archeological assessment and the Parsons site are further described in the Indigenous Consultation section of this submission. Imperial Oil has communicated to the HWN that it is committed to collaborate with the HWN during ongoing archaeological assessments. MCFN provided an email on February 21, 2019 with its comments on the ER. Imperial Oil provided responses to help clarify MCFN's inquiries. Imperial Oil indicated that it received no comments on the ER from Haudenosaunee Confederacy Chiefs Council, Haudenosaunee Development Institute or from Six Nations.

On December 2, 2019 the OEB was copied on a letter by the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI)<sup>12</sup> to Imperial Oil requesting that Imperial Oil file its Cultural Heritage Assessment Report (CHAR) for review.

On December 3, 2019 Imperial Oil filed with the MHSTCI the required reports for review.<sup>13</sup>

The Ministry of Transportation of Ontario (MTO) commented that it did not have concerns with the ER as long as Imperial Oil follows all applicable environmental legislation and obtains required permits. The MTO also asked to be informed of any work within its right-of-way to mitigate impacts to MTO projects. Imperial Oil responded that it would continue ongoing engagement with the MTO throughout the Project. Imperial Oil said it received no other comments from ministries during the OPCC review.

The City of Mississauga provided its comments on the ER by letter on April 3, 2019. Imperial Oil provided a detailed response letter on May 3, 2019. Imperial Oil stated

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<sup>11</sup> Imperial Oil response to OEB staff interrogatory no. 8 and Appendix 11: Engagement Summary Tables

<sup>12</sup> Formerly Ministry of Tourism, Culture and Sports (MTCS) now called Ministry of Heritage, Sport, Tourism, and Culture Industries

<sup>13</sup> Imperial Oil filed with the OEB a copy of the letter to MHSTCI, dated December 3, 2019 indicating that the required reports have been filed.

that other municipalities or regions did not comment specifically on the ER.

Hamilton Conservation Authority, Toronto and Region Conservation Authority and Conservation Halton commented on the ER during the OPCC review process. Their comments related to their respective permitting processes and requirements. On July 5, 2019, Imperial Oil filed permit applications to the Conservation Authorities.

Imperial Oil submitted in the evidence that it would develop several Environmental Protection Plans (EPP)<sup>14</sup> and several management and contingency plans prior to construction start. The EPP will be used as a guide for environmental management during construction of the Project and will be based on mitigation measures identified in the ER. The EPP will include a number of specific Environmental Management Plans (EMP) related to Project schedules, permit approval terms and conditions. The EPP and EMP will address issues and concerns raised by the OPCC members and by other consulted stakeholders. The EPPs and EMPs will be completed a minimum of 30 days prior to the start of construction and will be updated as needed throughout construction to reflect conditions of permits and approvals.

In response to interrogatories, Imperial Oil outlined the content of the EPPs and EMPs as follows:<sup>15</sup>

- An introduction to the Project and a description of the environmental setting and Project Schedule.
- An introduction to the EPP including an overview of the purpose and extent of the document.
- An overview of the environmental management of the Project, such as roles and responsibilities, training programs, and document control.
- General environmental measures applicable to all pre-construction Project activities.
- Resource-specific environmental measures applicable to all Project activities.
- Specific environmental measures applicable to all pipeline construction Project activities.
- Site-specific environmental alignment sheets.
- Project post-construction monitoring activities

In the ER, Imperial Oil indicated that the following EMP plans will be developed:<sup>16</sup>

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<sup>14</sup> Application, Exhibit D: Routing and Environmental, Tab 1, Schedule 3: Environmental Protection Plan, page 1

<sup>15</sup> Imperial Oil response to OEB staff interrogatory no. 6

<sup>16</sup> Waterdown to Finch Project, Environmental Report, February 2019, ERM, Section 7: Environmental Protection, Management and Contingency Plans, pages 7-1 to 7-4

- Erosion and Sediment Control Plan (ESCP)
- Water Management Plan
- Reclamation Plan
- Spill Prevention and Response Plan (which includes prevention (or management) and response (or contingency) measures)
- Traffic Management Plan
- Health and Safety Plan
- Communication Plan
- Waste Management Plan
- Contaminated Materials Management and Handling Plan.

Imperial Oil also stated that it would develop contingency plans to prepare its response to unexpected and unplanned events during construction that may impact the environment. These contingency plans will include:<sup>17</sup>

- Inadvertent Returns during HDD Plan
- Contaminated Material Management and Handling Plan
- “Chance Find” Contingency Plan for Archaeological Resources.

### **OEB Staff Submission**

In OEB staff's view, Imperial Oil has adhered to the requirements of the OEB Environmental Guidelines. OEB staff notes that Imperial Oil has been communicating with the affected stakeholders and that it has been committed to ongoing communication and cooperation with affected entities and permitting authorities. Imperial Oil plans to develop specific operational plans for environmentally sound construction of the Project. Both EPP and EMP documents will be developed prior to construction start and will incorporate specific measures and actions to implement mitigation measures. EPPs and EMPs will be developed to address and implement terms and conditions of permits and approvals that Imperial Oil has to acquire in addition to the OEB's approval for construction of the Project. OEB staff notes that Imperial Oil will develop contingency plans for contaminated materials handling during construction, and contingency plans should archeological resources be unexpectedly uncovered during construction.

OEB staff notes that the section below on conditions of approval in this submission will propose conditions to address OPCC review outcomes, land restoration, environmental

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<sup>17</sup> Waterdown to Finch Project, Environmental Report, February 2019, ERM, Section 7: Environmental Protection, Management and Contingency Plans, pages 7-1 to 7-4

monitoring and the requirements that Imperial Oil obtain all other permits and approvals for the Project.

With regard to approval of archeological survey reports and cultural heritage reports by the MHSTCI which have not been granted at this time, OEB staff submits that, according to the proposed Condition 5.a) v, Imperial Oil will have to obtain, among other approvals, MHSTCI approval prior to construction start. Also, it is noted that Imperial Oil did not object to this condition being attached to the OEB's leave to construct order.

Regarding the EPP and EMP documents and management and contingency plans that Imperial Oil indicated will be developed prior to construction start, OEB staff recommends that the OEB consider adding a condition of approval requiring that Imperial Oil notify the OEB and all parties in this proceeding of completion of each of these documents and make a copy of the documents available to a party upon their request.

### **3. Indigenous Consultation**

The Crown's duty to consult and accommodation arises when the Crown contemplates an action or makes a decision that may have an appreciable adverse effect on potential or proven Aboriginal or treaty rights. The OEB's hearing process can in some cases serve to discharge the duty to consult.

In accordance with the protocol and direction in the OEB Environmental Guidelines<sup>18</sup>, Imperial Oil initiated and has been conducting consultation with Indigenous communities potentially impacted by the Project. Prior to application filing, Imperial Oil contacted the Ministry of Energy, Northern Development and Mines (MENDM) with respect to the Crown's duty to consult. On September 10, 2018 Imperial Oil received from the MENDM correspondence indicating that the procedural aspects of the duty to consult were delegated to Imperial Oil (Delegation Letter). The Delegation Letter included a list of Indigenous communities that Imperial Oil should consult about the Project:

1. Mississaugas of the Credit First Nation
2. Six Nations of the Grand River
3. Huron-Wendat Nation (HWN)

The MENDM's Delegation Letter directed Imperial Oil to consult with both the Six Nations Elected Council and the Haudenosaunee Confederacy Chiefs Council (HCCC), and stated that all correspondence with the HCCC should copy the Haudenosaunee

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<sup>18</sup> Indigenous Consultation process for the pipeline projects subject to the OEB's approval are described in section 3.3

Development Institute (HDI)<sup>19</sup>. Although the Métis Nation of Ontario (MNO) was not listed in the Delegation Letter, Imperial Oil added the MNO as an Indigenous community to be informed of the Project and provided notification.

In addition to the engagement and consultation notifications set out in the OEB Environmental Guidelines, Imperial Oil served the OEB's Notice of Hearing on all Indigenous communities identified by MENDM and on the MNO.

HWN applied and was granted intervenor status and eligibility for cost awards. So far, HWN has actively participated in the written hearing by asking interrogatories. Imperial Oil responded to all HWN interrogatories.

Imperial Oil has filed its Indigenous Consultation Report (ICR) dated February 22, 2019, with the MENDM and included a copy with its application filed with the OEB. The ICR describes consultation activities, key comments, Imperial Oil's responses and commitments to address issues and concerns. The information on Indigenous consultation is recorded in the Record of Consultation Log<sup>20</sup>. Imperial Oil provided an update to the Record of Consultation Log in response to interrogatories on August 2, 2019<sup>21</sup>. Updated Indigenous Consultation Logs and supporting documentation filed on January 9, 2020 provide information on continuous consultation that Imperial Oil conducted with all three potentially affected Indigenous groups.

In accordance with the protocol set in the OEB Environmental Guidelines, upon completion of review of the ICR and the Record of Consultation, the MENDM will issue a letter stating its assessment on the sufficiency and adequacy of the procedural aspects of the consultation (Sufficiency Letter). Imperial Oil stated in response to interrogatories that the Sufficiency Letter has not been issued by MENDM as of August 2, 2019<sup>22</sup>. The Sufficiency Letter was not filed by the time Imperial Oil provided the Argument-in-Chief dated January 10, 2020. Imperial Oil also filed a record of ongoing communication with the MENDM about the Project and any requirements with respect to the Indigenous consultation process<sup>23</sup>.

The HWN letter to the OEB requesting intervenor status dated June 25, 2019 stated, among other things, that the pipeline will be located "...through the traditional territory of

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<sup>19</sup> The HCCC and the HDI represent the Six Nations of the Grand River. On November 26, 2018 the OEB received a copy of the correspondence from Mr. Detlor of HDI to Imperial Oil, which was intended to commence an engagement process related to the Project. The OEB responded to Mr. Detlor by a letter dated January 11, 2019.

<sup>20</sup> EB-2019-00007 Application, Exhibit H, Tab 2, Schedule 1-6

<sup>21</sup> Imperial Oil's Response to OEB staff interrogatories, Appendix 11, Engagement Summary, Table 1- Indigenous Communities, includes communication with HWN on July 23, 2019

<sup>22</sup> Imperial Oil's Response to OEB staff interrogatory no. 8. b)

<sup>23</sup> Imperial Oil's Appendices to responses to interrogatories, Appendix 11A, Engagement Summary, Table 2- Regulators and Stakeholders, pages 46-47

the Huron-Wendat Nation. This territory contains the richest recorded archeological history in Ontario. One of the Huron-Wendat Nation's most important archeological sites in Ontario, the Parsons Site (AkGv-8) is located on the proposed path of the pipeline." The Parsons Site is situated on the main terrace above the east bank of Black Creek, extending across and to the north and south of Hydro One's corridor. The Project will use an approximately 1 km long horizontal directional drill (HDD) trenchless method to cross 30 meters below the Parsons Site.<sup>24</sup> In its Argument-in-Chief Imperial Oil described its efforts to protect the Parsons site stating that "...recognizing that the full extent of the Parsons Site remains uncertain, Imperial Oil has planned to extend the HDD from the west side of Black Creek to the east side of Sentinel Road resulting in an approximately 450-metre buffer to the east and west of the Parsons Site as defined by the village palisade and identified middens."<sup>25</sup> Imperial Oil also noted that it will reevaluate the size of the buffers based on field assessment and Stage 2 Archeological Assessment.<sup>26</sup>

Imperial Oil described in responses to HWN interrogatories and OEB staff interrogatories the actions and commitments they intend to take to ensure that the Parsons Site archeology is fully protected during construction and operation of the pipeline.

Imperial Oil has been engaging with Huron-Wendat Nation throughout the archaeological assessment process for this Project and will continue to do so.

Imperial Oil completed the Stage 1 archeological assessment, identifying registered archeological sites in the Ontario Archaeological Sites Database along the Project route. The Stage 2 archeological assessment is underway.

Imperial Oil stated that it will develop a site avoidance and protection strategy for the Parsons Site prior to construction, will continue to consult and engage HWN during the development of this plan, and will provide a draft of the plan for review prior to implementation. The plan will be enforced during construction and, as required by the Ministry of Tourism, Culture and Sport (MTCS), a Stage 4 Avoidance and Protection report will be completed. The plan will follow the requirements set in the Standards and Guidelines for Consultant Archaeologists (MTCS 2011)<sup>27</sup>. On November 22, 2019 Imperial Oil filed with the OEB a copy of the letter it sent to the MENDM regarding Huron-Wendat Nation concerns related to archeological surveys and accommodation.

Imperial Oil stated that it would develop and provide an Operational Emergency Response Plan for the operation of the Project including the Indigenous community

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<sup>24</sup> Imperial Oil's Response to HWN interrogatory no. 1 a)

<sup>25</sup> Imperial Oil Argument-in-Chief, January 10, 2020, paragraph 71, page 16.

<sup>26</sup> Imperial Oil Argument-in-Chief, January 10, 2020, paragraph 72, page 16.

<sup>27</sup> Imperial Oil's Response to OEB staff interrogatory no. 9

component (i.e. a notification protocol in the event of an incident) of this plan with Indigenous communities. A Spill Prevention and Response Plan for Project construction will also be developed with engagement of the Indigenous communities regarding potential impacts on archaeological sites.

A comprehensive Stage 2 archaeological assessment is currently being completed to identify any non-registered archaeological sites and to confirm and clarify the location and extent of known sites identified in the Stage 1 archaeological assessment. Stage 2 fieldwork has been conducted with participation of Archaeological monitors from Indigenous communities including HWN. Imperial Oil will provide the Stage 2 assessment report for review and comments to the Indigenous communities prior to, or at the same time as, it files the Stage 2 Report with the MTCS.<sup>28</sup>

### **OEB Staff Submission**

OEB staff has not had the benefit of reading the final submissions of HWN, as its submissions are due the same day as those of OEB staff. Through reviewing HWN's letter of intervention and the interrogatory questions that it filed, OEB staff is aware that HWN has concerns (potentially amongst other things) related to protecting the Parsons site. OEB staff acknowledges that the Parsons site has great cultural importance to HWN and agrees that all reasonable steps should be taken to protect it. Given the mitigation measures that Imperial Oil has proposed for this portion of the Project – in particular, the commitment to using horizontal drilling to pass approximately 30 meters underneath the Parsons site and providing 450 meter buffers to the east and west of the Parsons site– OEB staff is not aware of what specific concerns may remain. To the extent that the Project poses potential risks to the Parsons site, OEB staff submits that Imperial Oil has taken sufficient steps to mitigate these risks and accommodate the concerns of HWN. It does not appear that the Project will have any appreciable impacts on any Aboriginal or treaty rights.

OEB staff notes that Imperial Oil has been conducting and appears to be committed to ongoing consultation and engagement with Indigenous communities. Imperial Oil confirmed that it will collaborate with Indigenous communities to respond to additional concerns that arise throughout the course of this Project.

OEB staff expects that Imperial Oil will continue to seek input from HWN and other affected Indigenous communities regarding recommendations for mitigation of impacts to archaeological resources.

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<sup>28</sup> Imperial Oil's Response to OEB staff interrogatory no. 9



OEB staff notes that Imperial Oil has provided capacity funding to Indigenous communities affected by the Project and that it plans to continue to work with the Indigenous communities on construction sub-contracting prospects and is open to provide resources relevant to general business opportunities such as sponsorship and capacity building.

Based on the review of the evidence on the record regarding Indigenous consultation, OEB staff's view is that Imperial Oil appears to be making sufficient efforts to consult and accommodate affected Indigenous groups. It seems that the consultation is still in progress around the archeological assessment concerns raised by the HWN, and OEB staff encourages Imperial Oil and HWN to continue with these consultations.

OEB staff notes that, in response to OEB staff interrogatory no. 9, Imperial Oil stated it would develop a site avoidance and protection strategy prior to construction for the Parsons Site and that it would follow the requirements set out in the Standards and Guidelines for Consultant Archaeologists (MTCS 2011).

Indigenous consultation and the role of the MENDM in the process is described in the OEB Environmental Guidelines:

“Prior to the leave to construct record being closed by the OEB, the Ministry of Energy will provide a letter to the applicant expressing its view on the adequacy of the Indigenous consultation based on materials provided to the Ministry of Energy. It is noted that the consultation should start in the pre-application stage and is likely to continue during OEB's review of the application and in some cases may continue through the life of the project. The applicant is expected to file with the OEB the letter from the Ministry of Energy and keep the summary of the consultation record up to date until the OEB renders its decision.”<sup>29</sup>

As described above in the OEB Environmental Guidelines, the MENDM is expected to issue a letter expressing its view on the adequacy of consultation (Sufficiency Letter) and the applicant is expected to file it with the OEB prior to closing of the record.

OEB staff notes that a Sufficiency Letter from the MENDM has not been filed as of this date. The OEB Environmental Guidelines further state:

“The OEB will assess the adequacy of the Crown's consultation efforts as part of the leave to construct hearing process. It is expected that the Ministry of Energy will

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<sup>29</sup> OEB Environmental Guidelines, page 18

continue to coordinate with proponents with respect to the duty to consult beyond the OEB's approval of the project."<sup>30</sup>

In its Argument-in-Chief Imperial Oil restated that it "...recognizes that HWN has particular concerns in respect of a location of archaeological significance known as the Parsons Site." But also argued that it "...has met and exceeds the delegated aspects of consultation, including with respect to HWN. As consultation will be ongoing throughout the life of the Project, Imperial submits that the concern of HWN should not prevent the Board from finding that the duty to consult has been met for the purposes of leave to construct."<sup>31</sup> Imperial Oil also commented in its Argument-in-Chief that the counsel for HWN, in its letter of December 6, 2019, advised that "the parties have not yet finalized an agreement as to the accommodation measures Imperial will commit to in order to avoid, mitigate or compensate for impacts the Project has had and will continue to have on HWN's inherent and treaty rights". Imperial Oil argues that: "While MENDM has not yet issued a letter of sufficiency, the Board has held on several occasions that it is the ultimate decision maker on sufficiency of consultation and is not bound by any decision or lack thereof by the Ministry."<sup>32</sup>

OEB staff considers a Sufficiency Letter to be a valuable input, although not a requirement for the OEB's decision on the adequacy of Indigenous consultation and accommodation. In this case, OEB staff is not aware of what the specific concerns of the HWN are. In addition, the evidence on the record seems to indicate that Imperial Oil has been working in good faith and making good progress in resolving the issues raised by HWN. OEB staff suggests that the OEB would be assisted by receiving the Sufficiency Letter, and to the extent it is not filed by the date of closing the record for the proceeding, the OEB may set a condition of approval that Imperial Oil obtain and file the Sufficiency Letter prior to construction start. Depending on the content of the Sufficiency Letter, it is possible that the OEB could provide for additional process.

OEB staff also expects that Imperial Oil will continue to consult and cooperate with the Indigenous communities after the OEB's approval is granted, during Project construction and operation.

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<sup>30</sup> OEB Environmental Guidelines, page 9

<sup>31</sup> Imperial Oil Argument-in-Chief, January 10, 2020, paragraph 67, page 15.

<sup>32</sup> Imperial Oil Argument-in-Chief, January 10, 2020, paragraph 84, page 19.

#### 4. Land Matters

This section of OEB staff's submission will address the following land-related matters:

- Permanent and temporary easements
- Form of agreements
- Other land and location related permits and approvals

##### **Permanent and Temporary Easements**

The Project will be located parallel to the existing pipeline within an Imperial Oil easement for approximately one-third or 18.8 km of the Project, on lands owned by Imperial Oil. Approximately two-thirds or 43.7 km of the Project will be located within a corridor managed by Hydro One Networks Inc., on lands that are owned by the Province and administered by Infrastructure Ontario.

In addition to the requirement for permanent land rights, construction of the pipeline will also require temporary work areas adjacent to the new or existing easement in order to store materials and machinery, and to conduct construction activities. These areas will require new temporary easements. Imperial Oil distinguished temporary workspace (TWS), which is typically 10 metres wide, from extra temporary workspace (ETWS), which varies in size depending on the location and use.

To accommodate the location of the new pipeline, Imperial Oil will have to acquire 5.77 hectares of new permanent easements, 107.80 hectares of temporary workspace (TWS), 56.60 hectares of additional temporary workspace (ETWS) and 0.01 hectares of land rights for permanent valve locations. The total area of land rights required for the Project is 218.92 hectares.<sup>33</sup>

New permanent easements affect land owned by: Hydro One/Infrastructure Ontario (approximately 70.32%); various municipal, provincial and utilities' land owners (approximately 25.34%); and five private landowners (approximately 5.34%).

According to responses to interrogatories<sup>34</sup>, as of August 2, 2019, Imperial Oil had not secured any of the permanent easements along the route of the Project and acquired three hectares or approximately 3.37% of temporary land rights needed for the Project. In its Argument-in-Chief dated January 2020, Imperial Oil did not indicate that any of the required permanent easements have been acquired at that time, but Imperial Oil did note that the majority of agreements and permits from permitting authorities and various public

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<sup>33</sup> Imperial Oil reduced the area it requires for the TWS from 59.77 to 56.60 hectares and increased the area for the ETWS from 106.70 to 107.80 hectares in Imperial's Argument-in-Chief, January 10, 2020, paragraph 55, pages 11-12.

<sup>34</sup> Imperial Oil response to OEB staff interrogatory 10.

and private agencies are anticipated to be received by Q2 of 2020.

Regarding the status and prospect of negotiations with affected landowners, Imperial Oil confirmed that it is working with landowners to present agreements to the landowners and acquire temporary and permanent land use rights at mutually acceptable terms<sup>35</sup>. In its Argument-in-Chief Imperial Oil stated that "... it remains in active negotiations with affected landowners and will obtain all land-related permits and agreements required with or for Project construction."<sup>36</sup>

### **OEB Staff Submission**

OEB staff's understanding is that Imperial Oil has acquired none of the permanent easements needed for the Project and only approximately 3.37% of the temporary land rights it needs to construct and operate the Project. However, OEB staff expects that Imperial Oil will provide a status update on all necessary land rights in its final submission.

OEB staff submits that Imperial Oil is expected to continue to negotiate with the affected landowners in order to acquire the necessary land rights for the Project prior to the commencement of construction.

### **Form of Easement Agreements – section 97 of the OEB Act**

According to section 97 of the OEB Act, "In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board." Imperial Oil has requested approval of the forms of permanent and temporary land use agreements it will offer or has offered to affected landowners as part of the application.

Imperial Oil filed in its evidence and in the Argument-in-Chief<sup>37</sup> forms of easement agreements to be approved by the OEB under section 97 of the OEB Act<sup>38</sup>.

In interrogatories<sup>39</sup>, OEB staff asked that Imperial Oil confirm that the same form of each permanent land use agreement (Grant Easement) and temporary land use agreements (Temporary Workspace Lease and Temporary Work Space-Laydown and Storage Agreement) and Construction Access Agreement filed for the OEB's approval, has been offered or will be offered to the landowners whose lands are affected. Imperial Oil confirmed that the same

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<sup>35</sup> Imperial Oil's response to OEB staff interrogatory no. 10

<sup>36</sup> Imperial Oil's Argument-in-Chief, January 10, 2020, paragraph 48, page 10

<sup>37</sup> Imperial Oil's Argument-in-Chief, January 10, 2020, Appendix B

<sup>38</sup> Application, Exhibit F, Land Matters, Tab 1, Schedule 4, Attachment 1: Grant of Easement Pipeline (Ontario) Agreement and Attachment 2: Temporary Workspace Lease Agreement

<sup>39</sup> Imperial Oil response to OEB staff interrogatory no. 12

forms of the agreement have been or will be offered to the affected landowners<sup>40</sup>.

Imperial Oil stated that all four forms of agreements required (the Grant of Easement, Temporary Workspace Lease, TWS Lease – Laydown and Storage and Construction Access agreements) have not been previously approved by the OEB but emphasized in its Argument-in-Chief that these forms are “substantially similar” to those previously approved by the OEB<sup>41</sup>. Imperial Oil noted that the forms of agreement were drafted by Ontario legal counsel for use in Ontario.

### **OEB Staff Submission**

OEB staff has reviewed the forms of the permanent and temporary land use agreements in comparison to previously-approved forms of agreements for pipeline projects approved under section 90 of the OEB Act<sup>42</sup>. Based on the comparison, it appears that the forms submitted by Imperial Oil are consistent with forms previously approved by the OEB, with no substantial differences. OEB staff has no concerns with the forms of agreements filed by Imperial Oil for approval under section 97 of the OEB Act.

### **Other Permits and Approvals**

Imperial Oil indicated that the Project will cross linear features such as watercourses, roads, power lines, gas pipelines and other utilities and that these crossings will require permits and agreements. The evidence provides a summary of all permits and agreements<sup>43</sup>.

Imperial Oil has applied or will apply for a number of approvals and permits such as: encroachment permits, road occupancy and road crossing and utility crossing permits, entrance permits, municipal consent, water source/water disposal permits (to be submitted but may not be required), Public Utilities Coordination Committee (PUCC) approval in the City of Mississauga and Region of Peel) park access permit, municipal consent, utility crossing approval, permanent and temporary crossing approvals.

Entities that are the granting authorities for the permits and approvals include: Canadian National Railway, Canadian Pacific Railway, Metrolinx, Hydro One Networks Inc./Infrastructure Ontario, Ministry of Transportation, Ministry of Government and

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<sup>40</sup> Imperial Oil response to OIEB staff interrogatory 12 a)

<sup>41</sup> Imperial Oil's Argument-in-Chief, January 10, 2020, paragraph 60, page 13

<sup>42</sup> EB-2016-0186 Union Gas Limited Panhandle System Reinforcement Application, EB-2014-0261 Union Gas Limited 2016 Dawn to Parkway Expansion Project Application

<sup>43</sup> Application, Exhibit F, Land Matters, Tab 1, Schedule 3: Land Related Permits and Agreements Required, pages 1-5 Table 3-1 and updated Table 3-1 in response to OEB staff interrogatory no. 11

Consumer Services/Infrastructure Ontario, all the municipalities regional and local where the Project route is located, conservation authorities, provincial and national pipeline operators whose pipelines have to be crossed, electricity distributors with infrastructure affected by the Project route and mobile and internet service providers.

In its Argument-in-Chief Imperial anticipates that most of the agreements and permits will be received by the 2<sup>nd</sup> quarter of 2020 and the remaining by the 3<sup>rd</sup> quarter of 2020.

### **OEB Staff Submission**

OEB staff submits that Imperial Oil appears to be committed to obtaining all the permits and approvals that are required for the location, construction and operation of the Project.

OEB staff notes that proposed condition of approval 5 a) v., requires that Imperial provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project. In OEB staff's submission, Imperial Oil's compliance with this condition ensures that all other required permits and approvals will be obtained by Imperial Oil. OEB staff notes that Imperial Oil agreed to this condition.

## **5. Conditions of Approval**

By way of interrogatories, OEB staff proposed draft Conditions of Approval for Imperial Oil's review and comments. Imperial, in response to OEB staff interrogatories and in its Argument-in-Chief, has agreed with the majority of the conditions but requested amendments to certain conditions. Each of the proposed conditions and proposed changes by Imperial will be addressed below, including OEB staff's submission on Imperial's comments.

### Condition 1: No amendments proposed by Imperial Oil

1. Imperial Oil Inc. (Imperial Oil) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB- 2019-0007 and these Conditions of Approval.

### Condition 2: Imperial Oil proposed amendment to 2(a)

2. (a) Authorization for leave to construct shall terminate ~~18~~ **24** months after the decision is issued, unless construction has commenced prior to that date.

(b) Imperial Oil shall give the OEB notice in writing:

- i. of the commencement of construction, at least ten days prior to the date construction commences
- ii. of the planned in-service date, at least ten days prior to the date the facilities go into service
- iii. of the date on which construction was completed, no later than 10 days following the completion of construction
- iv. of the in-service date, no later than 10 days after the facilities go into service

Imperial requested an additional six months to account for any unanticipated delays in the construction start date. OEB staff takes no issue regarding this proposed amendment to Condition 2 (a).

Condition 3: Imperial Oil proposed an amendment.

3. Imperial Oil shall implement all the recommendations of the Environmental Report filed in the proceeding, and *implement all commitments made in response to ~~the recommendations and directives identified by~~* the Ontario Pipeline Coordinating Committee *member* review.

Imperial Oil provided the following explanation to the proposed amendment: "Not all recommendations provided by the Ontario Pipeline Coordinating Committee members could be implemented during construction. Where adoption of a recommendation was not possible, Imperial provided a response to that recommendation with a rationale and/or alternate mitigation measure. Imperial will uphold all commitments made in response to comments received during the review of the ER." In OEB's staff view, the wording proposed by Imperial Oil is acceptable as it holds Imperial Oil responsible for implementation of its commitments made to OPCC members during the process of their review of the Environmental Report.

Confirmation of Imperial Oil's adherence to Condition 3 has been required by the proposed Condition 5.b) i, which asks that Imperial's Project Manager of Execution provide to the OEB a certification of adherence to Condition 3.

Condition 4: Imperial Oil proposed an amendment.

4. Imperial Oil shall advise the OEB of any proposed **material** change to the OEB approved ~~construction or restoration procedures~~ **Project**. Except in an emergency, Imperial shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.

Imperial Oil proposed the above amendment to Condition 4 so that this notification requirement is limited to material changes only. Imperial Oil indicated that this change would allow for greater site-specific flexibility associated with construction or restoration activities.

OEB staff is of the view that the OEB should be notified of any change that affects the basis of the OEB's approval, and to the extent that it does not materially impact a project, the OEB can approve the change through an expedient process that it has exercised on many occasions. If a change to a project impacts the need for the project, alternative selection, environmental matters, Indigenous consultation, or land matters, then the OEB should be notified. This is consistent with the approach taken with all hydrocarbon pipelines. Also, changes in construction and restoration procedures need to be reported and approved by the OEB as changes in construction and restoration procedures may cause changes in environmental impacts and required mitigation measures. Therefore, OEB staff does not believe that the wording of Condition 4 should be changed.

Condition 5: Imperial Oil proposed an amendment.

Imperial Oil proposed that in Conditions 5(a)(i), 5(a)(v) and 5(b)(i), the individual responsible for confirming adherence of Imperial Oil to these conditions and providing certification be the "Project Manager of Execution" rather than a "senior executive of the company".

5. Both during and after construction, Imperial Oil shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
  - a) a post construction report, within three months of the in-service date, which shall:
    - i. Provide a certification, by ***Imperial's Project Manager of Execution*** ~~a senior executive of the company~~, of Imperial Oil's adherence to Condition 1



- ii. Describe any impacts and outstanding concerns identified during construction
  - iii. Describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
  - iv. Include a log of all complaints received by Imperial Oil, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
  - v. Provide a certification, by ***Imperial's Project Manager of Execution*** ~~a senior executive of the company~~, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project
- b) a final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
- i. Provide a certification, by ***Imperial's Project Manager of Execution*** ~~a senior executive of the company~~, of Imperial Oil's adherence to Condition 3
  - i. Describe the condition of any rehabilitated land
  - ii. Describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
  - iii. Include the results of analyses and monitoring programs and any recommendations arising therefrom
  - iv. Include a log of all complaints received by Imperial Oil, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions

Imperial Oil stated that the reason for the proposed change is that the Project Manager of Execution and not a "senior executive of the company" will be the individual responsible for confirming adherence to the conditions and overall management of construction. OEB staff does not consider this to be acceptable rationale and therefore does not agree with changing the OEB's standard wording of Condition 5. The rationale for the requirement of a certification by a senior executive is so that the person certifying has accountability for the company's actions. In OEB staff's view, this accountability typically lies with a senior executive or higher. In the absence of better

rationale from Imperial Oil, OEB staff disagrees with the change proposed.

Condition 6: Imperial Oil proposed an amendment.

Imperial shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name ~~and contact information~~ to the OEB and to all the appropriate stakeholders, and shall clearly post the project manager's contact information in a prominent place at the construction site.

Imperial Oil proposed an edit to the wording of Condition 6 to provide only the Project Manager's name but not the contact information to the OEB and to all appropriate stakeholders.

OEB staff does not see a clear rationale for this proposed amendment, and in fact the proposed change does not seem to be consistent with the intention of the condition. OEB staff understands that this condition is intended to provide contact information to any stakeholder with a concern about the project, so that issues or questions can be dealt with directly by Imperial Oil, on an expedited basis. OEB staff suggests that this change not be accepted.

**OEB Staff Submission**

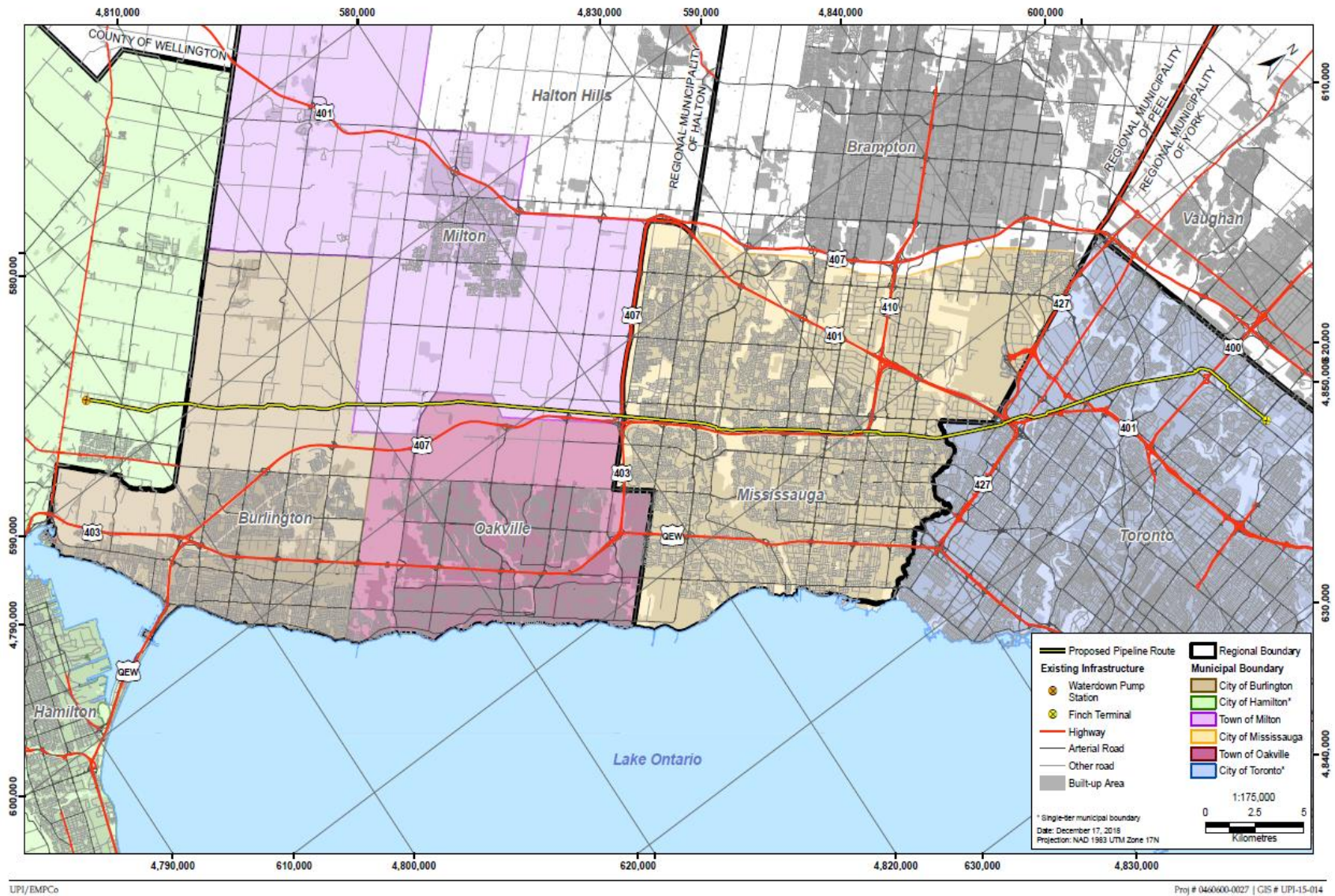
Section 23 of the OEB Act permits the OEB, when making an order, to "impose such conditions as it considers proper".

These conditions have been reviewed by Imperial Oil in response to OEB staff interrogatories and also commented further in Imperial's Argument-in-Chief. Imperial Oil proposed amendments to the conditions. OEB staff does not oppose the amendments proposed by Imperial Oil with the exception of the proposed changes to Condition 4, 5 and Condition 6. OEB staff submits that the OEB should approve Imperial Oil's Project subject to the Conditions of Approval attached as Appendix B to this submission.

All of which is respectfully submitted.

## **Appendix A**

Figure 2.2-1  
Waterdown to Finch Project Overview



## **Appendix B**

**Leave to Construct  
Conditions of Approval  
Application under Section 90 and 97  
of the OEB Act Imperial Oil Limited  
EB-2019-0007**

1. Imperial Oil Inc. (Imperial Oil) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB- 2019-0007 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate ~~48~~ *24 months* after the decision is issued, unless construction has commenced prior to that date.  
(b) Imperial Oil shall give the OEB notice in writing:
  - i. of the commencement of construction, at least ten days prior to the date construction commences
  - ii. of the planned in-service date, at least ten days prior to the date the facilities go into service
  - iii. of the date on which construction was completed, no later than 10 days following the completion of construction
  - iv. of the in-service date, no later than 10 days after the facilities go into service
- 3 Imperial Oil shall implement all the recommendations of the Environmental Report filed in the proceeding, and *implement all commitments made in response to the recommendations and directives identified by the Ontario Pipeline Coordinating Committee member review.*
- 4 Imperial Oil shall advise the OEB of any proposed change to the OEB approved construction or restoration procedures Project. Except in an emergency, Imperial shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.

5. Both during and after construction, Imperial Oil shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
- a) a post construction report, within three months of the in-service date, which shall:
    - ii. Provide a certification, by ~~Imperial's Project Manager of Execution~~ a senior executive of the company, of Imperial Oil's adherence to Condition 1
    - ii. Describe any impacts and outstanding concerns identified during construction
    - iii. Describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
    - iv. Include a log of all complaints received by Imperial Oil, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
    - v. Provide a certification, by ~~Imperial's Project Manager of Execution~~ a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project
  - b) a final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
    - v. Provide a certification, by ~~Imperial's Project Manager of Execution~~ a senior executive of the company, of Imperial Oil's adherence to Condition 3
    - vi. Describe the condition of any rehabilitated land
    - vii. Describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
    - viii. Include the results of analyses and monitoring programs and any recommendations arising therefrom
    - ix. Include a log of all complaints received by Imperial Oil, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions

- 6 Imperial Oil shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to all the appropriate stakeholders, and shall clearly post the project manager's contact information in a prominent place at the construction site.

The OEB's designated representative for the purpose of these Conditions of Approval shall be the OEB's Manager of Natural Gas Applications (or the Manager of any OEB successor department that oversees leave to construct applications).