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February 7, 2020

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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: Written Reply Submission of Imperial Oil Limited

Further to Procedural Order No. 6 dated December 6, 2019, please find enclosed the Written Reply Submission of Imperial Oil Limited.

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

Sincerely,



Patrick G. Welsh

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

ONTARIO ENERGY BOARD

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

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

**REPLY ARGUMENT OF
IMPERIAL OIL LIMITED**

February 7, 2020

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I. OVERVIEW

1. Imperial Oil Limited (“**Imperial**”) makes this Reply Argument in support of its application (the “**Application**”) to the Ontario Energy Board (the “**OEB**” or the “**Board**”) for:
 - (a) an order granting leave to construct approximately 63 kilometres of pipeline and associated infrastructure to transport refined oil products from its facility in the City of Hamilton to its facility in the City of Toronto (the “**Project**”); and
 - (b) an order approving the forms of easement agreement related to the construction of the Project.¹
2. The Project is a proactive replacement of an important segment of Imperial’s Sarnia Products Pipeline (the “**SPPL**”). Operating safely for many decades, the SPPL is crucial infrastructure that provides refined fuel products (i.e., gasoline, diesel, and jet fuel) used by households and businesses across the Greater Toronto and Hamilton Area. To support the continued safe, reliable, and environmentally responsible transportation of these products, the Project will replace the transportation capabilities of an existing SPPL segment between rural Hamilton and North York.
3. Pursuant to Procedural Order 6,² on January 10, 2020 Imperial filed its Argument-in-Chief in which it argued that the Project is in the public interest. As submitted in its Argument-in-Chief, Imperial maintains that it has demonstrated that there is a need for the Project and that it has provided the OEB with sufficient information regarding the Project’s environmental impacts, the Project’s impacts on landowners, and Indigenous consultation, such that the Board should, accordingly, grant leave to construct.³
4. Imperial does not purport to repeat the submissions made in its Argument-in-Chief in this Reply Argument. Rather, Imperial’s submissions will respond to certain matters raised by OEB Staff and the intervenors in their reply arguments and summarize certain developments in respect of Indigenous consultation which have occurred since Imperial filed its Argument-in-Chief.
5. Ultimately, Imperial agrees with OEB Staff’s conclusion that “the OEB should approve Imperial Oil’s Project subject to the Conditions of Approval attached as Appendix B.”⁴

¹ EB-2019-0007, [Updated Application and Evidence of Imperial Oil Limited for Leave to Construct](#) (29 May 2019) [Application].

² EB-2019-0007, [Procedural Order 6](#) (6 December 2019).

³ EB-2019-0007, [Argument-in-Chief of Imperial Oil Limited](#) (10 January 2020), para. 3 [Argument in Chief].

⁴ EB-2019-0007, [Reply Submissions of OEB Staff](#) (24 January 2020) [Staff Submissions], p. 24.

Additionally, many of the intervenors have expressed that they are generally supportive of the Project.⁵

6. Imperial submits that the submissions proffered by the City of Toronto (“**Toronto**”), the City of Mississauga (“**Mississauga**”), the Region of Peel (“**Peel**”), the Regional Municipality of Halton (“**Halton**”), (collectively, the “**Municipalities**”) are, in essence, requests for conditions to the OEB’s leave to construct decision which are: (i) technical in nature and outside of the OEB’s expertise or jurisdiction; (ii) purely municipal matters; (iii) already addressed by the conditions of approval set out at Appendix B of the OEB Staff Submission (the “**OEB Conditions**”); (iv) properly the subject of negotiated agreements; or (v) outside the proper scope of a leave to construct decision.
7. Imperial submits that the submissions proffered by Hydro One Networks Inc. (“**HONI**”) raise issues that are properly the subject of the land agreements currently being negotiated. Imperial notes that since the filing of intervenor submissions, HONI and Imperial have made significant progress in these negotiations, including on the matters raised by HONI in its submissions, as described in greater detail below.
8. Consequently, Imperial submits that any conditions proposed by the intervenors beyond the OEB Conditions are not proper⁶ or necessary and should not be imposed by the Board. Rather, leave to construct for this important Project should be granted, subject only to the OEB Conditions.

II. REPLY ARGUMENT

A. The Scope of the OEB’s Review

9. Imperial’s Application is an application for leave to construct pursuant to section 90(1) of the OEBA.⁷ On a leave to construct application, if the Board is of the opinion that the

⁵ EB-2019-0007, [Reply Submissions of the City of Toronto](#) (24 January 2020), para. 4 [Toronto Submissions] “Toronto is agreeable to the Project, provided that it is subject to conditions”; EB-2019-0007, [Reply Submissions of the City of Mississauga](#) (24 January 2020), para 2 [Mississauga Submissions] “The City supports in principle Imperial’s decision to replace the 63 km section of the pipeline”; EB-2019-0007, [Submissions of the Regional Municipality of Peel](#) (15 October 2019), p. 1 “The Region is generally supportive of the Project”; EB-2019-0007, [Reply Submissions of Canadian Manufacturers & Exporters](#) (24 January 2020), p. 2 [CME Submissions] “CME strongly supports the approval of Imperial’s Waterdown to Finch Project”; EB-2019-0007, [Reply Submissions of Greater Toronto Airports Authority](#) (24 January 2020), p. 2 [GTAA Submissions] “The GTAA firmly supports the approval and advancement of this project”; EB-2019-0007, [Submissions of the Huron-Wendat Nation](#) (24 January 2020), para. 7 [HWN Submissions] “The HWN is satisfied with the commitments Imperial has made to avoid and mitigate the Project’s impacts and potential impacts to archaeological and burial sites, and supports the approval of this leave-to-construct application”.

⁶ [Ontario Energy Board Act, 1998](#), S.O 1998, c. 15, Sched. B, s. 23(1) [OEBA]. Section 23(1) provides that “The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application.”

⁷ [OEBA](#), s. 90.

proposed work is “in the public interest”, it shall make an order granting leave to carry out the work.⁸ When determining whether a project is in the public interest, the OEB typically examines the need for the project; the project cost and economics; the environmental impacts; impacts on landowners; and Indigenous consultation.⁹

10. In the course of this proceeding, intervenors have raised issues related to pipeline design, safety of operation, pipeline integrity, emergency response and management, pipeline deactivation, municipal planning matters, the content of environmental and emergency plans, and the terms of land acquisition agreements being negotiated.
11. As set out in further detail below, conditions in respect of the issues raised by intervenors are either already covered by the OEB Conditions, are the subject of active landowner negotiations, or are beyond the scope of the OEB’s review. The OEB Conditions require that Imperial obtain all necessary permits, licenses and approvals and implement all the recommendations of the Environmental Report filed in the proceeding, and all commitments made in response to the Ontario Pipeline Coordinating Committee (“OPCC”). As such, Imperial submits that these alternate conditions are not proper or necessary and should not be imposed by the OEB.
12. Imperial recognizes that the matters identified by the intervenors are important, however Imperial agrees with the assessment of OEB Staff that “these issues are partially or entirely outside the regulatory oversight of the OEB”.¹⁰

(a) The OEB Relies on the Expertise and Jurisdiction of Technical Authorities

13. The Municipalities have suggested that it is proper for the OEB to impose conditions relating to purely technical matters¹¹ which are subject to the jurisdiction of the Technical Standards and Safety Authority (the “TSSA”) and other regulatory agencies.
14. The Board has consistently held that it will defer to regulatory agencies that have responsibility for environmental, technical, and safety standards. As held by the OEB in this very proceeding, “[i]t would not be in the public interest for the OEB to attempt to duplicate the efforts or review processes of the TSSA” as “[a]ny approval of the OEB will

⁸ [OEBA](#), s. 96.

⁹ EB-2018-0263, [Decision and Order](#) (11 July 2019), p. 5.

¹⁰ Staff Submissions, p. 3.

¹¹ See e.g. [Toronto Submissions](#), Proposed Conditions 4, 10, 12–13, 23–25, 30–33, 35, 38; [Mississauga Submissions](#), Proposed Conditions 1–4; EB-2019-0007, [Reply Submissions of the Regional Municipality of Peel](#) (24 January 2020), Proposed Conditions 6, 8–9, 12, 14–17, 26–29, 32–37, 39 [Peel Submissions]; EB-2019-0007, [Reply Submissions of the Regional Municipality of Halton](#) (24 January 2020), Proposed Conditions 1–2, 10, 12–14.

be conditional on the Applicant obtaining all necessary approvals from both the TSSA, as well as a variety of other agencies”.¹²

15. In its assessment of the public interest, the OEB does not assume the role of these other regulatory agencies in assessing the merits of whether a given project meets technically-complex licensing requirements.
16. This deference to and reliance upon the expertise of other regulatory agencies does not mean, as Toronto has suggested, that the OEB’s review is “ousted”.¹³ Rather, this approach is consistent with both: (i) the relative expertise of the other regulators such as the TSSA in determining whether a project meets technical standards; and (ii) the express grant of jurisdiction to other regulatory agencies to make such determinations under their respective legislative authority.
17. As OEB Staff have noted, the OEB ensures compliance with these regimes by way of the OEB Conditions which will require Imperial to obtain all necessary permits, licenses and authorizations from these other regulatory agencies:

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.¹⁴

18. As set out in the following sections, Imperial submits that it is proper for the OEB to rely on the technical expertise of other regulatory agencies and impose the OEB Conditions but not the improper and unnecessary conditions proposed by the other intervenors.

(b) Leave to Construct is not the Proper Forum for Purely Municipal Issues

19. Certain Municipalities have also requested that the OEB consider and impose conditions which relate to purely municipal issues.¹⁵ For example, certain Municipalities have proposed conditions relating to the roles for various municipal departments and staff in the unlikely event of an incident, conditions relating to municipal event planning and

¹² EB-2019-0007, [Decision and Order on the City of Toronto Motion](#) (14 November 2019), p. 9 [Motion Decision and Order].

¹³ [Toronto Submissions](#), Section C.

¹⁴ [Staff Submissions](#), p. 4.

¹⁵ See e.g. [Toronto Submissions](#), Proposed Conditions 11, 26–29, 34, 37, 39; [Peel Submissions](#) 30–33, 39; [Halton Submissions](#), Proposed Conditions 1, 8–9, 11, 16.

park/garden use, conditions relating to compliance with transit authority procedures, and conditions related to compliance with municipal transportation and infrastructure policy developments.

20. While Imperial remains committed to engagement with Municipalities to work to address these municipal issues, such matters are properly the subject of municipal permitting and approval processes or for agreements with the Municipalities, and it would not be appropriate or necessary for the OEB to impose conditions beyond the OEB Conditions regarding these matters.
21. First, as noted above, the OEB Conditions require compliance with all applicable legislative and regulatory requirements. Additionally, Imperial is actively negotiating with Municipalities regarding land matters, and these agreements together with the Municipalities' permitting and approval processes (and the permitting and approval requirements of other regulatory agencies) will likely address most if not all of the Municipalities' underlying concerns. Finally, Imperial has been engaging with the Municipalities in a proactive and responsible manner regarding their concerns. However, Imperial disagrees with the Municipalities that it is necessary or proper for the OEB to impose conditions related to purely municipal matters in a leave to construct decision.
22. Notwithstanding Imperial's position that municipal matters are beyond scope of the Board's review on leave to construct, Imperial has (on the record in this proceeding) provided all parties with information on how these matters are being addressed through engagement with the Municipalities. For example, Imperial has confirmed with the Municipalities and other authorities that it will adhere to relevant municipal and provincial legal, regulatory and permitting requirements to ensure safe operation of the Project¹⁶ and has advised that it will provide a number of construction plans/drawings to the Municipalities in advance of construction and to consider municipal concerns in the development of such plans where appropriate.¹⁷
23. In respect of municipal emergency preparedness, Imperial has provided the Municipalities site-specific emergency response plans and will provide capacity-building opportunities to stakeholders as required, specifically to supplement already required municipal training programs.¹⁸ For example, Imperial has stated that it is committed to regular touchpoints with staff in the Toronto's Office of Emergency Management and other appropriate

¹⁶ EB-2010-0007, [Environmental Report](#) (25 February 2019), p. I [Environmental Report].

¹⁷ See e.g. 2019-0007, [Imperial's Response to Interrogatories](#) (6 August 2019) [IRR] 12.4(c), 13.4(d), 14.4(a), 15.4(d), 16.4(g), 21.4(a), 24.4(a), 30.4(c), 37.4(b), 38.4(a)

¹⁸ See e.g. [IRR](#) 29.4(b).

Toronto staff to review Toronto's emergency plans with a focus on Imperial infrastructure and emergency management.¹⁹

24. With respect to land matters, Imperial has committed to review realty-related requests and establish agreed upon realty protocols²⁰ and Imperial has previously provided individual crossing drawings to certain municipalities for all roads and Individual Ownership Plans, showing details of the exact parcels of municipally-owned lands on which Imperial requires temporary access or temporary use for constructing the pipeline.²¹
25. Imperial remains committed to engagement with the Municipalities regarding their concerns and will adhere to all municipal permitting and approval processes applicable to the Project. The various municipal matters raised in this proceeding will continue to be resolved, as in the normal course, through continued engagement with the Municipalities. However, a leave to construct application is not the forum to adjudicate on matters that are purely municipal in nature, such as traffic planning, the development of municipal infrastructure, or compliance with various Official and other plans. Imperial submits that any Board decision in respect of municipal matters of this nature would be duplicative, unprecedented, and improper.

B. The Need for the Project

26. As set out in its Argument-in-Chief, Imperial submits that there is a substantial and pressing need for the Project in order to support the safety and reliability of supply to the region.²² Imperial's SPPL is important infrastructure that provides petroleum products used by households and businesses across the Greater Toronto and Hamilton Area.
27. OEB Staff has agreed that there is a need for the Project²³ and no intervenor has argued against Project need. For example, HONI has confirmed that it does not oppose the Project or the need for the Project.²⁴ Both the Greater Toronto Airports Authority (the "GTAA") and Canadian Manufacturers and Exporters ("CME") have made intervenor submissions supporting the Project.²⁵

¹⁹ See [IRR](#) 29.4(g).

²⁰ See e.g. [IRR](#) 19.4(a)

²¹ See e.g. [IRR](#) 19.4(c).

²² [Argument-in-Chief](#), Section A.

²³ [Staff Submission](#), p. 6.

²⁴ EB-2019-0007, [Reply Submissions of Hydro One Networks Inc](#) (24 January 2020), para. 32 [HONI Submissions],

²⁵ [GTAA Submissions](#), p. 2; [CME Submissions](#), p. 2.

28. This Project is a proactive replacement that will ensure the continued safe, reliable, and environmentally responsible transportation of products throughout the region for decades to come.²⁶ Imperial submits that there is significant consensus in respect of Project need.

(a) Updated Project Milestones

29. As noted by OEB Staff, Imperial originally planned to begin construction of the Project in December 2019, with an expected in-service date of late 2020.²⁷ Imperial has updated its Project milestones to reflect the continued progression of the leave to construct process and other permit-required field work.

30. At the request of OEB Staff, the following chart updates the original Project milestones as submitted by Imperial in its Application:²⁸

	Original Milestones	Updated Milestones
Expected LTC Approval	Q3 2019	Q1 2020
Receipt of Permits and Approvals	Q3 2019	Q2 2020
Commence Construction	Q4 2019	Q3 2020
Complete Construction	Q3 2020	Q3 2021
Complete Hydrostatic Testing	Q3 2020	Q3 2021
Commissioning	Q4 2020	Q3 2021
Final Inspection	Q4 2020	Q3 2021
Line in Service	Q4 2020	Q3 2021
Site Restoration	Q3 and Q4 2020	Q3 and Q4 2021

31. Imperial now anticipates that construction will commence in the third quarter of 2020 resulting in a planned in-service date in the third quarter of 2021.

²⁶ [Application](#), Exhibit C, Tab 1, Schedule 1, p. 1.

²⁷ [Staff Submission](#), p. 6.

²⁸ [Application](#), Exhibit E, Tab 1, Schedule 6, p. 1.

C. Project Economics

32. As confirmed in the OEB Staff Submission, while project economics are typically examined by the Board on leave to construct application, 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”.²⁹

D. Environmental Impacts

33. Consistent with the process outlined in the *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (the “**Environmental Guidelines**”)³⁰ on February 1, 2019 Imperial submitted pre-filed evidence, including the *Waterdown to Finch Project Environmental Report*³¹ (the “**Environmental Report**”) prepared by ERM Consultants Canada Ltd.³² (“**ERM**”) to the members of the OPCC for review and comment. The Environmental Report was also provided to municipalities, conservation authorities and Indigenous Communities (defined, for the purposes of the Application, below) for their review and comment.

34. As set out in its Argument-in-Chief, Imperial submits that the evidence before the Board demonstrates that it has sufficiently addressed environmental issues through its proposed mitigation and restoration program and its commitment to implement the recommendations in the Environmental Report and obtain all required permits, licenses and approvals.³³

(a) The Environmental Report Concluded that Environmental Effects will be Avoided or Mitigated

35. The Environmental Report concludes that potential adverse environmental effects will be largely avoided, or, where avoidance is not feasible, mitigated to minimize the effects such

²⁹ [Staff Submission](#), p. 2.

³⁰ Ontario Energy Board, [Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario](#), 7th ed (2016) [Environmental Guidelines].

³¹ [Environmental Report](#), p. 6-5.

³² [Environmental Report](#), p. III. ERM Consultants Canada Ltd. (ERM) were retained by UPI Projects Canada (UPI) on behalf of Imperial to prepare this Environmental Report. The physical, environmental and socio-economic studies, assessment and reporting were supported by Savanta Inc., Past Recovery Archaeological Services Inc., Unterman McPhail Associates, CanACRE Ltd., NATIONAL Public Relations, and Stantec Consulting Ltd. ERM is the Canadian affiliate of ERM Worldwide Group Ltd.

³³ [Argument-in-Chief](#), Section C.

that they will not be significant. Environmental monitoring and regular inspection will be used to confirm that mitigation measures are implemented and effective.³⁴

36. The Environmental Report also concluded that cumulative effects are considered to be not significant because the Project route follows existing easements and infrastructure corridors through areas previously altered by agriculture or urban/suburban development.³⁵
37. The Environmental Report further provides that an Environmental Protection Plan and several management and contingency plans will be developed prior to construction. These plans will build on the key mitigation measures for the Project identified in the Environmental Report and will also outline the environmental inspections that will be carried out to confirm effective implementation of mitigation measures and/or contingency plans.³⁶

(b) The Environmental Report Complies with All Requirements

38. Toronto has alleged that the Environmental Report contains “major omissions”.³⁷ Imperial entirely disagrees with this allegation and further disagrees with Toronto’s submission that Imperial has not complied with the Environmental Guidelines.
39. OEB Staff has concluded that “Imperial Oil has been conducting the environmental assessment, routing, and stakeholder consultation in accordance with the OEB Environmental Guidelines”.³⁸
40. Toronto’s allegations are entirely unsupported. Potential effects associated with construction have been addressed in the Environmental Report and mitigation measures and management plans have been provided for.³⁹ The Environmental Report properly considers post-construction and cumulative effects, with ERM having concluded that such effects are anticipated to be marginal given that the replacement pipeline will follow the existing line as closely as possible.⁴⁰ The local and regional study areas identified for the Project and described in the Environmental Report consider the likelihood of off-site

³⁴ [Environmental Report](#), p. I.

³⁵ [Environmental Report](#), p. I.

³⁶ [Environmental Report](#), p. 7-1.

³⁷ EB-2019-0007, [City of Toronto Submissions](#) (24 January 2020), p. 7 [Toronto Submissions].

³⁸ [Staff Submission](#), p. 7.

³⁹ [Environmental Report](#), pp. 5-1 to 5-35.

⁴⁰ [Environmental Report](#), p. 6-5.

effects, including those specific to water crossings, based on the experience and knowledge of specialists for each feature.⁴¹

41. Ultimately, there is no basis in fact or on the record to support Toronto's allegations that the Environmental Report, prepared by a reputable and qualified environmental consultant, does not comply with the Environmental Guidelines.

(c) The OEB's Standard Conditions of Approval are Proper and will Address all Potential Environmental Impacts

42. Imperial submits that the OEB Conditions are proper in respect of environmental matters and will, among others, ensure that:

- (a) the Project is constructed and the land restored in accordance with the Board's Decision and Order and the Conditions of Approval;⁴²
- (b) all the recommendations of the Environmental Report are implemented;⁴³
- (c) all commitments made in response to the OPCC member review are implemented;⁴⁴
- (d) all impacts of construction are monitored and reported to the OEB;⁴⁵ and
- (e) all approvals, permits, licenses and certificates required to construct, operate and maintain the Project are obtained.⁴⁶

43. These conditions are consistent with the Environmental Guidelines, which explicitly sets out certain appropriate conditions for hydrocarbon pipelines at section 6.1—i.e., those proposed by OEB Staff in this matter.⁴⁷ Any suggestion by the intervenors that additional conditions are required in order to ensure compliance with the Environmental Guidelines is therefore misplaced and unsupported by the Environmental Guidelines.

⁴¹ [Environmental Report](#), pp. 5-6 to 5-8, 5-10 to 5-11.

⁴² [Staff Submissions](#), Appendix B, Condition 1.

⁴³ [Staff Submissions](#), Appendix B, Condition 3.

⁴⁴ [Staff Submissions](#), Appendix B, Condition 3.

⁴⁵ [Staff Submissions](#), Appendix B, Condition 5(a)(ii) and (iii).

⁴⁶ [Staff Submissions](#), Appendix B, Condition 5(a)(v).

⁴⁷ [Environmental Guidelines](#), p. 64.

44. As set out below, these standard conditions are proper and will ensure that the Project is constructed and operated in accordance with all applicable environmental and safety legislation and the recommendations of the Environmental Report.
45. ERM’s expert opinion is that, with the implementation of the mitigation measures recommended in the Environmental Report as well as adherence to all permitting, regulatory and legislative requirements, potential adverse environmental effects will largely be avoided or mitigated to the extent that any effects will not be significant.⁴⁸ Imperial submits that the OEB Conditions ensure such implementation and compliance, and as such the conditions proposed by the Municipalities are not required in order to ensure environmental safety and, therefore, are not proper or necessary.

(i) *The Standard Conditions Properly Apply to Hydrocarbon Pipelines*

46. Toronto has argued that the OEB Conditions are not proper because “oil pipelines need more rigorous conditions than gas pipelines”.⁴⁹ Imperial submits that the OEB Conditions properly apply to the Project.
47. Imperial further submits that a finding by the Board that oil pipelines need more rigorous conditions than gas pipelines would be contrary to both the statutory scheme in the OEBA and the Environmental Guidelines, which do not differentiate between natural gas and oil for the purposes of leave to construct. Such a finding would also be contrary to the recommendations of OEB Staff, who have proposed the standard conditions arising from the Environmental Guidelines—which apply to “hydrocarbon pipelines”, not simply “natural gas pipelines”.⁵⁰
48. Imperial submits that the Board does not need to engage in an analysis of the inherent risks of oil versus natural gas pipelines in order to find that the OEB Conditions are appropriate in this case, particularly given the findings of ERM in the Environmental Report that potential adverse environmental effects will largely be avoided or mitigated to the extent that any effects will not be significant, as set out in the previous section.

(ii) *The Standard Conditions are Consistent with the Provincial Policy Statement*

49. Certain Municipalities have raised the application of the Provincial Policy Statement (the “PPS”) to the current proceeding and have argued that, in order to be consistent with the PPS, the OEB must impose certain conditions in excess of the OEB Conditions.

⁴⁸ [Environmental Report](#), p. I.

⁴⁹ [Toronto Submissions](#), p. 4.

⁵⁰ [Environmental Guidelines](#), pp. 3 – 4.

50. It is well established that the OEB, as part of its approval process in a leave to construct application, is required to be *consistent* with the PPS.⁵¹ Imperial does not contest this fact. However, it does reject any submission that the OEB would be *non-compliant* with the PPS by only imposing the OEB Conditions, which are standard conditions imposed by the OEB on hydrocarbon pipeline leave to construct decisions.
51. In order to ensure consistency with the PPS, the Environmental Guidelines require the proponent engage with members of the OPCC.⁵² The Environmental Guidelines state that “[i]t is *advisable* for applicants to include in the [Environmental Report], a discussion of the relevance to the project of particular provincial policies”.⁵³
52. In conducting the Environmental Report, ERM reviewed the PPS and numerous other municipal and provincial plans to inform the Project’s planning and to target the field surveys on important and sensitive environmental and socio-economic features.⁵⁴ The Environmental Report contains a detailed analysis on land use planning, which applies the PPS.⁵⁵
53. No concerns were raised during the course of the OPCC review that the Project would not be consistent with the PPS.
54. None of the intervenors have cited any decision or other evidence which would support a finding that the standard conditions applied by the OEB in leave to construct applications are inconsistent with the PPS. Imperial submits that the OEB Conditions are both proper and consistent with the PPS and that additional conditions are not required in order for the Board’s decision to be consistent with the PPS.

(d) The Appropriate Content of Environmental and Emergency Response Plans Should be Determined by Experts

55. The Municipalities have submitted that the OEB should impose conditions specifying the content of certain environmental and emergency response plans.⁵⁶ With respect, neither the intervenors nor the OEB have the requisite technical expertise to determine the appropriate content of any such plans.

⁵¹ [Environmental Guidelines](#), p. 28.

⁵² [Environmental Guidelines](#), pp. 27 – 29.

⁵³ [Environmental Guidelines](#), p. 28.

⁵⁴ [Environmental Report](#), pp. 4-3 to 4-4.

⁵⁵ [Environmental Report](#), pp. 4-24 to 4-25.

⁵⁶ See e.g. [Toronto Submission](#), Proposed Conditions 24–25, 37; [Peel Submissions](#), Proposed Conditions 11, 28–29; [Halton Submissions](#), Proposed Conditions 1, 12–14.

56. The Environmental Report provides for the development of an Environmental Protection Plan and several management and contingency plans prior to the commencement of construction, including, among others:⁵⁷
- (a) an Erosion and Sediment Control Plan;
 - (b) a Water Management Plan;
 - (c) a Reclamation Plan;
 - (d) a Spill Prevention and Response Plan;
 - (e) a Waste Management Plan;
 - (f) a Contaminated Materials Management and Handling Plan;
 - (g) an Inadvertent Returns during HDD Plan; and
 - (h) a Chance Find Contingency Plan for Archaeological Resources.
57. Given that the OEB Conditions will require Imperial to comply with the recommendations of the Environmental Report, Imperial will be obligated to create and implement these plans.
58. Drafts of these plans have been developed by professional environmental, engineering, and archeology experts and, where required, have been submitted to the applicable regulatory authorities in order to ensure compliance with permitting requirements.
59. The content of these plans are properly developed by experts in order to ensure compliance with all requisite environmental legislation and technical and safety standards.
- (e) **The TSSA and MECP have the Expertise and Jurisdiction to Ensure Compliance with Environmental Legislation and Technical and Safety Standards**
60. Imperial agrees with the assessment of OEB Staff that submissions in respect of pipeline design, safety of operation, pipeline integrity, emergency response and management, and deactivation of the pipeline are partially or entirely outside the regulatory oversight of the OEB.⁵⁸ Conditions which would require the OEB or the Municipalities to step into the shoes of the regulatory authorities with jurisdiction for these matters are not proper, nor in the public interest.

⁵⁷ [Environmental Report](#), pp. 5-34, 7-1 to 7-4,

⁵⁸ [Staff Submissions](#), p. 3.

61. In addition to the requirement to obtain leave to construct, hydrocarbon pipeline construction and operation in Ontario is subject to the technical and safety standards established by the TSSA pursuant to its authority under the *Technical Safety Standard Act* (the “**TSSA Act**”),⁵⁹ and Ontario Regulation 210/01 (“**O Reg. 210/01**”).⁶⁰
62. As noted by OEB Staff, in addition to the TSSA’s oversight of the safe operation and design of the Project, the Project will also be subject to requirements under the Ontario *Environmental Protection Act* (the “**EPA**”)⁶¹ with respect to spill prevention, spill reporting, spill management plans, spill amelioration, and related powers of the MECP.⁶²
63. For example, section 91.1 of the EPA imposes statutory obligations upon Imperial to develop and implement plans: (i) to prevent or reduce the risk of spills of pollutants; (ii) to prevent, eliminate or ameliorate any adverse effects that result or may result from spills of pollutants, including, plans to notify the MECP, other public authorities and members of the public who may be affected by a spill; and (iii) to ensure that appropriate equipment, material and personnel are available to respond to a spill.⁶³ Ontario Regulation 224/07 prescribes the content of such plans.⁶⁴
64. As stated by the OEB in its Decision and Order in EB-2018-0263, “the standard conditions of approval require compliance with all recommendations of the Environmental Protection Act, 1990, the Environmental Report and the Ontario Pipeline Coordinating Committee” and that “compliance with these conditions will ensure that the requirements of other approvals, permits, licenses and certificates are fully addressed”.⁶⁵
65. As submitted by OEB Staff, “[g]iven this regulatory framework, the OEB’s approval of a leave to construct application is typically made conditional upon the applicant’s compliance with all applicable regulatory requirements, including those under the TSSA’s and the Ministry of Environment, Conservation and Parks’ mandate and legislation”.⁶⁶ To that end, “Imperial will be required to satisfy the TSSA’s licence terms, pipeline design and safety specifications, pipeline integrity and emergency management requirements,

⁵⁹ [Technical Standards and Safety Act, 2000](#), S.O. 2000, c. 16 [TSSA Act]

⁶⁰ [O. Reg. 210/01](#).

⁶¹ [Environmental Protection Act](#), R.S.O. 1990, c. E.19 [EPA].

⁶² [Staff Submissions](#), p. 4.

⁶³ [EPA](#), s. 91.1.

⁶⁴ [O. Reg. 224/07](#) (Spill Prevention and Contingency Plans).

⁶⁵ EB-2018-0263, [Decision and Order](#) (11 July 2019), p. 13.

⁶⁶ [Staff Submissions](#), p. 4.

including related to the risk of spills, and to meet all other applicable Provincial and Federal standards and regulations.”⁶⁷

66. In response to interrogatories, Imperial has confirmed that the Project will feature risk mitigation enhancements including modern manufacturing and welding technology, high-performance protective coating and thicker walls exceeding CSA Z662 standards.⁶⁸ Imperial has further confirmed that it conducts regular depth-of-cover and erosion surveys at all watercourse crossings to confirm that the pipe is sufficiently protected and, in some cases, has increased the depth of the proposed pipe for long-term protection from further erosion and extreme flooding scenarios.⁶⁹
67. Because any approval of the OEB will likely be conditional on Imperial obtaining all necessary approvals from the TSSA and other regulatory authorities, it would not be in the public interest for the OEB to attempt to duplicate the efforts of these entities when such issues are already otherwise ensured both by complementary legislation such as the TSSA Act and the EPA and by the OEB Conditions requiring compliance with the same.⁷⁰

(f) Conditions Requiring Imperial to Seek Municipal Review or Approval of Environmental Plans and/or Emergency Plans are not Proper

68. The Municipalities have submitted that the OEB should impose conditions requiring Imperial to seek review and/or approval by the Municipalities of its environmental and emergency response plans and other technical documentation, such as risk assessments and construction drawings.⁷¹ The Municipalities do not have the requisite technical expertise nor the jurisdictional authority to approve the documents requested, and making conditions requiring such review or approval would, for the same reasons outlined in the preceding section, result in unnecessary and improper duplication where expertise and jurisdiction already exists.
69. Imperial has committed to continuing communication and cooperation with the Municipalities and other authorities to adhere to relevant municipal, provincial and federal legal, regulatory and permitting requirements to ensure safe operation of the Project⁷² and

⁶⁷ [Staff Submissions](#), p. 4.

⁶⁸ [IRR 10.4\(d\)](#).

⁶⁹ [IRR 33.4\(a\)](#).

⁷⁰ [Motion Decision and Order](#), p. 9.

⁷¹ See e.g. [Toronto Submissions](#), Proposed Conditions 23, 26, 29–30, 34–35, 38; [Mississauga Submissions](#), Proposed Conditions 1–4; [Peel Submissions](#), Proposed Conditions 6, 14–15, 17, 27–28, 33–34, 36, 39 – 40; [Halton Submissions](#), Proposed Conditions 1, 8–10, 12–14

⁷² [Application](#), Exhibit H, Tab 1, Schedule 1, pp. 26 – 27.

has further advised that it will provide a number of plans and information to the Municipalities.⁷³

70. Imperial has provided robust information to the Municipalities to assist them in spill and incident response and has committed to continuing to work to ensure emergency preparedness for all interested parties. While Imperial remains fully committed to ongoing cooperation with the Municipalities and other stakeholders, Imperial maintains that the Municipalities' requested conditions in this respect are improper.

(g) Summary: Environmental Impacts

71. Imperial submits that the evidence before the Board demonstrates that it has adequately addressed the environmental issues through its proposed mitigation and restoration program and its commitment to implement the recommendations in the Environmental Report.
72. ERM's expert opinion concluded that, assuming Imperial follows the procedures recommended in the Environment Report, there will be no significant long term environmental impacts from the Project. To that end, Imperial submits that the Board should find that Imperial has satisfactorily addressed all environmental issues and that the OEB Conditions are proper and sufficient to ensure environmental matters are fully addressed.

E. Impacts on Land Owners

73. As set out in its Argument-in-Chief, Imperial submits that the Project proactively responds to all land matters.⁷⁴ Imperial remains in active negotiations with affected landowners and will obtain all land-related permits and agreements required with or for Project construction.

(a) The Project Route is the Only Feasible Route

74. As set out in Imperial's Argument-in-Chief, the Project will be constructed in a route following the existing SPPL as closely as possible and within existing easements, thereby minimizing incremental environmental and stakeholder impacts and facilitating safe and efficient operation and maintenance of the SPPL.⁷⁵ As outlined in Environmental Report, "[i]t was determined that the proposed pipeline route is the only reasonable option,

⁷³ See e.g. [IRR](#) 12.4(c), 13.4(d), 15.4(d), 19.4(c), 21.4(a).

⁷⁴ [Argument-in-Chief](#), Section D.

⁷⁵ [Application](#), Exhibit E, p. 1.

particularly within the urban landscape, because it benefits from following the existing utility corridors.”⁷⁶ An alternative route underwent review, but was deemed not feasible.⁷⁷

75. As such, Imperial submits that it would be improper for the OEB to impose any conditions requested by an intervenor requiring changes to, or intervenor approval of, the Project route.

(b) The Forms of Agreement Submitted by Imperial Should be Approved

76. Section 97 of the OEBA requires that an application for 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.”⁷⁸ In its Argument-in-Chief Imperial submitted for Board approval the forms of permanent and temporary land use agreements it will offer or has offered to affected landowners.⁷⁹
77. OEB Staff has reviewed the forms of agreement and confirmed 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.”⁸⁰
78. Imperial agrees with the assessment of OEB Staff and requests that the Board approve the forms of agreement submitted by Imperial as Appendix B to its Argument-in-Chief.

(c) No Other Form of Agreement Must be Approved

79. Toronto, Mississauga, Peel, and HONI have requested that the Board approve their standard forms of land agreement and/or impose conditions requiring Imperial to use a Municipality’s standard form of agreement.⁸¹ With respect, these requests are properly the subject of negotiations between Imperial and landowners, and misconstrue the nature of section 97 of the OEBA.
80. The OEB has held that its approval of the form of an agreement pursuant to section 97 of the OEBA is intended to provide a “baseline” for the initial offer of an easement agreement

⁷⁶ [Environmental Report](#), p. 2-10.

⁷⁷ [Environmental Report](#), p. 2-10.

⁷⁸ [OEBA](#), s. 97.

⁷⁹ [Argument-in-Chief](#), Appendix B.

⁸⁰ [Staff Submissions](#), p. 19.

⁸¹ EB-2019-0007, [Reply Submissions of Hydro One Networks Inc](#) (24 January 2020), para. 31 [HONI Submissions], [Toronto Submissions](#), Proposed Condition 36; [Mississauga Submissions](#), Proposed Conditions 6, 9; [Peel Submissions](#), Condition 38.

to a landowner, and prevents a person granted leave to construct from unilaterally resiling from its proffered terms.⁸² Section 97 does not provide for the Board to review or approve the form of agreements preferred by landowners.

(d) The OEB Does Not Mandate the Substance of Landowner Agreements on Leave to Construct

81. The Municipalities and HONI have requested that the Board impose conditions which are properly the terms of land owner agreement negotiations or which mandate Imperial and landowners to reach certain agreements.⁸³
82. Imperial submits that such conditions are not proper and should not be imposed by the Board.
83. The Board has consistently held that, at the leave to construct stage, the OEB has jurisdiction to approve the form of the agreement presented to landowners, but not to mandate that an agreement be reached or to set the terms of any such agreement.
84. In EB-2013-0074, the Board summarized this distinction as follows: “The Board determines the appropriate subject-matter of the form of an agreement to be offered to an Ontario landowner, as well as the technical format of the document but not the substance of the agreements, which are left to the landowner and the pipeline company to negotiate.”⁸⁴
85. Section 99 of the OEBA provides a statutory remedy in the event that such agreements cannot be reached following leave to construct.⁸⁵ Any condition mandating agreement between Imperial and landowners improperly denies Imperial this statutory remedy and is inconsistent with section 99 of the OEBA and other provisions in the OEBA related to land access.
86. Notwithstanding that these matters are properly the subject of landowner agreements, by way of update, Imperial notes that since the filing of intervenor submissions, HONI and Imperial have made significant progress in these negotiations, including on the matters raised by HONI in its submissions. With guidance from the Ministry of Government and Consumer Services, Imperial has confirmed to HONI its agreement in respect of easement widths. Imperial continues its negotiations with HONI in respect of land agreements.

⁸² EB-2013-0074, [Decision and Order](#) (1 January 2013).

⁸³ [Toronto Submissions](#), Proposed Conditions 34 – 37, 39; [Mississauga Submissions](#), Proposed Conditions 7–9; [Peel Submissions](#), Proposed Conditions 38 – 41; [Halton Submissions](#), Proposed Conditions 8–10, 12, 15–17; [HONI Submissions](#), para. 34.

⁸⁴ EB-2013-0074, [Decision and Order](#) (1 January 2013).

⁸⁵ [OEBA](#), s. 99

(e) Conditions Mandating Financial Assurances are not Proper

87. The Municipalities have requested that the Board impose conditions requiring Imperial to provide the Municipalities with certain financial assurances, indemnities and insurance protections.⁸⁶ While such terms may properly form the terms of agreements with landowners, they are entirely improper as leave to construct approval conditions.
88. Imperial is already subject to the requirements of both the OEBA and the EPA, which impose statutory mechanisms for compensation to landowners in the event of damage.
89. Part VI of the OEBA specifies several circumstances where a landowner is entitled to compensation for damages caused by the construction of a hydrocarbon pipeline: damages caused by an entry onto land for the purpose of surveying and fixing the site of the proposed work;⁸⁷ damages resulting from the exercise of any rights acquired under an agreement with the landowner;⁸⁸ and any damages resulting from the exercise of a right to inspect, alter, maintain, repair, renew, disconnect, replace or removal work.⁸⁹ In each of these circumstances, the OEBA provides that if an agreement on the amount of damages cannot be reached with the owner of the land, compensation for damages will be determined in accordance with section 100 of the OEBA.⁹⁰
90. The EPA also provides statutory mechanisms to ensure landowners are compensated in the event of environmental damage. Pursuant to section 93(1) of the EPA, it is the duty of the owner or controller of a spilled pollutant to clean up the spill, including doing everything practicable to prevent and eliminate the negative effects from a spill and restoring the natural environment to its original state.⁹¹ Section 99(2) of the EPA provides that any person has the right to compensation for loss or damage incurred as a direct result of the spill of a pollutant that causes or is likely to cause an adverse effect from the owner of the pollutant and the person having control of the pollutant.⁹²

⁸⁶ Toronto Submissions, Proposed Conditions 15–21, 33(c); Mississauga Conditions, Proposed Conditions 5–6; Peel Submissions, Proposed Conditions 18–25, 37(c); Halton Submissions, Proposed Conditions 3–7;

⁸⁷ [OEBA](#), s. s. 98(2).

⁸⁸ [OEBA](#), s. 102.

⁸⁹ [OEBA](#), s. 103(2).

⁹⁰ [OEBA](#), s. 100.

⁹¹ [EPA](#), s. 93(1).

⁹² [EPA](#), s. 99(2)

91. Imperial has also already confirmed in its response to interrogatories that its insurance coverage includes accidental pollution related to environmental exposures.⁹³
92. Imposing the conditions related to financial assurances requested by the Municipalities would be prejudicial to Imperial's ability to reach an agreement or address the issues through the established statutory mechanisms.

(f) Summary: Impacts on Land Owners

93. Imperial has minimized the impact to, and the number of, affected landowners by utilizing as much of the existing pipeline right-of-way as possible. Pursuant to section 97 of the OEBA, Imperial has offered or will offer to each owner of land affected by the approved route or location an agreement in the form submitted for approval by the Board, which Imperial submits (and OEB Staff confirms) is substantially similar to those previously approved by the OEB. Imperial remains in active negotiations with affected landowners and will obtain all land-related permits and agreements required with or for Project construction.
94. The Board should not impose conditions which preclude Imperial's ability to rely on applicable statutory mechanisms or which impose the terms of landowner agreements which remain the subject of negotiations.

F. Indigenous Consultation

95. As set out in its Argument-in-Chief, Imperial submits that its Indigenous consultation has been sufficient for the purposes of the OEB's leave to construct decision.⁹⁴ Imperial has and will continue to work diligently to understand Indigenous perspectives on issues associated with the Project and to engage with Indigenous Communities and their representatives in open and forthright consultation.⁹⁵
96. As required by the Environmental Guidelines, on May 23, 2018, Imperial sent a letter to the Ministry of Energy, Northern Development and Mines ("MENDM") notifying it of Imperial's intention to apply to the OEB for leave to construct the Project, and requesting direction on the duty to consult.⁹⁶
97. On September 10, 2018, the MENDM issued a letter to Imperial, pursuant to which certain procedural aspects of the Crown's duty to consult were delegated to Imperial (the

⁹³ [IRR](#) 9.4(c).

⁹⁴ [Argument-in-Chief](#), Section E.

⁹⁵ [Application](#), Exhibit G, Tab 1, Schedule 1, p. 2.

⁹⁶ [Application](#), Exhibit G, Tab 1, Schedule 3.

“**Delegation Letter**”).⁹⁷ The potentially impacted Indigenous Communities identified in the Delegation Letter were: the Mississaugas of the Credit First Nation (the “**MCFN**”); the Six Nations of the Grand River—including both the Six Nations Elected Council (the “**SNEC**”) and the Haudenosaunee Confederacy Chiefs Council (the “**HCCC**”); and the Huron Wendat Nation (the “**HWN**”) (collectively, the “**Indigenous Communities**”). The Delegation Letter listed Imperial’s specific obligations.⁹⁸

98. Imperial believes that it has not only met, but exceeded, these delegated obligations. At this time, as far as Imperial is aware, MCFN, SNEC and HCCC have relayed no outstanding concerns in respect of Imperial’s consultation efforts to date, and, as set out in its Reply Argument, HWN has advised that it “does not have residual concerns with the Project’s approval”.⁹⁹ HWN has further stated in its Reply Argument that it “is satisfied with the commitments Imperial has made to avoid and mitigate the Project’s impacts and potential impacts to archaeological and burial sites, and supports the approval of this leave-to-construct application”.¹⁰⁰
99. On January 28, 2020, the MENDM wrote to Imperial advising that “the ministry has no concerns with the sufficiency of consultation to date” (the “**Letter of Sufficiency**”).¹⁰¹
100. Imperial submits that its consultation with Indigenous Communities is sufficient for the purposes of granting leave to construct. Imperial submits that, given the evidence before the Board and the granting of the Letter of Sufficiency by MENDM, it is proper for the Board to find that the duty to consult has been adequate for the purposes of leave to construct, and that leave to construct should be granted.

III. CONCLUSION

101. This Project is a proactive and prudent replacement of an existing SPPL segment to ensure the continued safe, reliable, and environmentally responsible transportation of products throughout the Greater Toronto and Hamilton region for decades to come. Imperial submits that not only is there need for the Project, but the duty to consult has been met, and the Project has been designed in a manner that will:
- (a) replace aging infrastructure with new facilities which conform to the highest technical and safety standards and meet or exceed CSA Z662;

⁹⁷ EB-2019-007, [Delegation Letter](#) (10 September 2018) [Delegation Letter].

⁹⁸ [Delegation Letter](#), pp. 3 – 4.

⁹⁹ [HWN Submissions](#), para. 43.

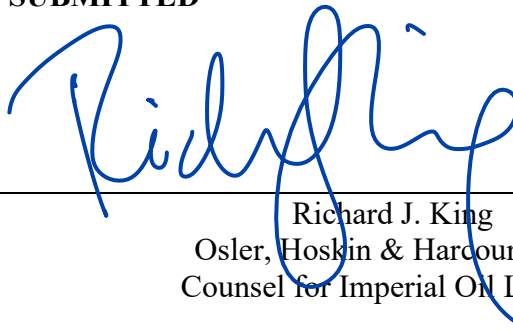
¹⁰⁰ [HWN Submissions](#), para. 7.

¹⁰¹ Eb-2019-007, [Letter of Sufficiency](#) (29 January 2020).

- (b) largely avoid potential adverse environmental effects, or, where avoidance is not feasible, employ mitigation to minimize the effects such that they will not be significant; and
 - (c) follow the existing SPPL as closely as possible, thereby minimizing incremental stakeholder impacts and facilitating safe and efficient operations and maintenance.
102. Imperial submits that the OEB Conditions will ensure that the recommendations of the Environmental Report are implemented and all applicable legislation is complied with, thereby protecting the environment and the interests of landowners, and ensuring that the pipeline meets all requisite technical and safety standards.
103. As set out above, Imperial submits that the conditions requested by the Municipalities and HONI are:
- (a) already addressed by the OEB Conditions;
 - (b) already addressed by other regulatory regimes;
 - (c) properly the subject of negotiated agreements; or
 - (d) are outside the proper scope of leave to construct and are therefore not proper.
104. Imperial submits that the Board should find the Project in the public interest and issue leave to construct, subject to the OEB Conditions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

February 7, 2020



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