

November 19, 2020

Our File No. 157191

BY EMAIL and RESS

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

Dear Ms. Long:

**Re: Imperial Oil Limited
Waterdown to Finch Project
OEB File No. EB-2020-0219: Abell Evidence**

We write to bring to the Board's attention certain content contained in the answers to interrogatories provided by Imperial Oil on November 16, 2020.

We note that starting on page 47 of the PDF document filed by Imperial Oil are detailed accounts, in some instances reproduced verbatim, of settlement discussions that took place on a without prejudice basis. In each instance, the discussions were either stated as expressly without prejudice at the outset of discussions and/or the content of the discussions were clearly with respect to settlement discussions.

While these communications did not occur within a formal settlement conference established by the Board, it is our view general principles of settlement privilege should apply to communications in furtherance of settlement and should not form part of the evidentiary record absent an express waiver of that settlement privilege. We note the Board's Practice Direction on Settlement Conferences states:

"Subject to the applicable law relating to settlement privilege, settlement information is not admissible as evidence in a Board proceeding, or otherwise, except where the filing of such settlement information is necessary to resolve a subsequent dispute over the interpretation of any provision of a settlement proposal and subject to any direction of the Board."¹

It is highly inappropriate to disclose to third parties, and the public at large through a public filing, the detailed content of without prejudice settlement discussions. We have not and do not waive the confidentiality and privilege of these without prejudice communications. Further, the content

¹ *Practice Direction on Settlement Conferences*, Ontario Energy Board, Revised October 28, 2016, page 5.

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of such positions should not be permitted to prejudice our client's position. We would therefore ask such information be removed from the evidentiary record.

Yours truly,

AIRD & BERLIS LLP



Scott Stoll
SS/tp

Cc: Zora Crnojacki – OEB
Michael Millar – OEB
All parties registered in EB-2020-0219

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