

ONTARIO ENERGY BOARD

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

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

SUBMISSIONS OF THE CITY OF TORONTO

A. SUMMARY

1. The purpose of this hearing is to determine if the proposed realignment is in the public interest. As set out in the Ontario Energy Board ("OEB")'s Procedural Order No. 1, considerations may include:

- a. the need for the realignment and alternatives to the proposal;
- b. environmental matters related to the Route Realignment, and;
- c. land related matters related to the Route Realignment.¹

2. In Toronto' view, Imperial has provided insufficient information to permit this analysis. Its motion is unsupported by routing studies, and provides minimal environmental information.

3. Should the OEB grant the motion, Toronto requests Conditions of Approval indemnifying it from expenses or damages related to the realignment (*e.g.* fires and associated contaminant releases). Toronto acknowledges the OEB's Leave to Construct decision for Imperial's Project, which declined to require indemnities by Imperial.² However, the proximity of realignment to a

¹ EB-2020-0219, Procedural Order No. 1, September 2, 2020, p 4.

² EB-2019-0007, Decision and Order, March 12, 2020, p 31 [Leave to Construct Decision].

pesticides warehouse creates a specific fire and environmental risk not present during the Leave to Construct process

B. PROCEDURAL HISTORY OF THE MOTION TO REVIEW AND VARY

4. On June 25 and 30, 2020, Imperial notified the OEB of its proposed realignment.

5. On July 17, 2020, the OEB required Imperial to provide additional information regarding potential impacts of the proposed changes on landowners and on the environment. The required information included:

- a. any concerns raised by potentially affected stakeholders and landowners;³
- b. previously or newly identified potential environmental impacts caused by the proposed change in the alignment of the route, and;⁴
- c. specific mitigation measures for the proposed route re-alignment.⁵

6. On July 31, 2020, Imperial wrote to the OEB to advise that the proposed realignment was not in its view a material departure from its Project, i.e. the Waterdown to Finch pipeline previously granted Leave to Construct. Imperial wrote that "[c]ertain landowners have expressed concern about the pipeline easement and TWS affecting leased areas utilized by their tenants and potential impacts to their operations". It did not mention any concerns about fire safety or pesticide storage.⁶ Imperial stated that the proposed realignment did not have any newly-identified potential environmental impacts, and that "[n]o additional mitigation measures have been identified as a result of the route change".⁷

³ EB-2019-0007, Ontario Energy Board Letter, Request for Changes of Project Routing, July 17, 2020, p 4.

⁴ *Ibid*, p 5.

⁵ *Ibid*.

⁶ EB-2019-007, Imperial Oil Letter, Request for Changes of Project Routing, July 31, 2020, p 9 of PDF.

⁷ *Ibid*, p 12 of PDF.

7. On August 19, 2020, the OEB's delegate held that the proposed change appeared to be a material change. As such, the OEB would treat Imperial's change request as a Motion to Review and Vary the original Leave to Construct decision.⁸

8. On September 18, 2020, Imperial provided further evidence to the OEB.⁹ It did not mention any concerns about fire safety or pesticide storage. It mentioned unspecified safety and liability concerns about the location of a valve.¹⁰

9. On September 25, 2020, 112308 Ontario Inc. and 2394561 Ontario Inc. (collectively, "Abell") requested intervenor status. Abell advised of fire safety and pesticide storage concerns due to the proximity of the proposed pipeline realignment and the pesticide storage facilities at 7 Meridian Drive and 151 Skyway Drive, Toronto.¹¹

10. Imperial and Abell provided responses to interrogatories on November 16, 2020.

C. SCOPE OF THE MOTION HEARING

11. The OEB has stated that the purpose of this hearing is to consider whether Imperial's proposed realignment is in the public interest. It identified considerations including:

- a. the need for the realignment and alternatives to the proposal;
- b. environmental matters related to the Route Realignment, and;
- c. land related matters related to the Route Realignment.¹²

12. These are typical considerations, and were applied in the Leave to Construct decision for Imperial's Project.¹³

⁸ EB-2019-007, Ontario Energy Board Decision, Request for Changes of Project Routing, August 19, 2020, p 9.

⁹ EB-2020-0219, Imperial Oil Evidence, September 18, 2020.

¹⁰ *Ibid*, p 6.

¹¹ EB-2020-0219, 112308 Ontario Inc and 2394561 Ontario Inc, Intervention Request, September 25, 2020, pp 2-3.

¹² EB-2020-0219, Procedural Order No. 1, p 4.

¹³ Leave to Construct Decision, *supra* note 2, p 5.

D. INCOMPLETE INFORMATION PROVIDED BY IMPERIAL

13. Imperial has filed insufficient information to allow for a public interest assessment of its proposed realignment. At most, it has offered high-level summaries of limited information. Imperial has not filed any routing studies or environmental studies or reports for the proposed realignment. There is no correspondence or evidence from the Ministry of Transportation or Hydro One Networks Inc. documenting the route constraints that Imperial alleges.

14. In Toronto's view, this missing information is necessary to assess the need for the realignment and alternatives to it, as well as landowner and environmental concerns.

E. RISKS OF THE REALIGNMENT ROUTE

15. Imperial's proposed realignment may increase the risk of fire, pesticides release, or both. It would run next to Abell's pesticides storage facility. The Abell facility stores highly toxic pesticides and other chemicals, including substances that are "extremely flammable and "very toxic to aquatic life with long lasting effects".¹⁴ Pesticide fires also create health risks for first responders and the public from airborne contaminants.¹⁵

16. A similar fire in Kelowna appears to have resulted in over \$4 million in environmental remediation costs.¹⁶ The facility's sprinkler system can be operated for only 14 minutes before the containment system is breached. Given the danger of contaminated firefighting water runoff, the emergency response plan for the site recommends letting the chemical storage area burn.¹⁷

¹⁴ EB-2020-0219, 1112308 Ontario Inc. and 2394561 Ontario Inc. Evidence, October 29, 2020, Tab 12.

¹⁵ *Ibid*, Tab 3, p 2.

¹⁶ *Ibid*, Tab 4, p 21.

¹⁷ *Ibid*, Tab 5, p 1; Tab 6, p 9.

17. Contaminated firefighting water is extremely difficult to contain.¹⁸ One approach is to construct a retaining wall or containment unit in advance.¹⁹ Without such a retaining wall, firefighting water runoff may contaminate soil and risk contamination of Mimico Creek.²⁰ Mimico Creek flows into Lake Ontario.²¹ Lake Ontario is the source of Toronto's drinking water.²² Imperial proposes not to construct a retaining wall or containment unit as part of its proposed realignment.²³ In Toronto's view, Imperial and/or Abell should construct an adequate containment system.

F. CONDITIONS OF APPROVAL

18. Should the OEB approve the proposed realignment, Toronto requests Conditions of Approval requiring Imperial to indemnify it from expenses or damages related to the realignment (e.g. fires and associated contaminant releases).

19. Toronto acknowledges the OEB's Leave to Construct decision for Imperial's Project, which declined to require specific indemnities by Imperial.²⁴ However, the realignment creates a specific fire and environmental risk not present during the Leave to Construct process.

20. The requested Conditions of Approval pertain to environmental and landowner matters, both of which are within the scope of this hearing.²⁵

¹⁸ *Ibid*, Tab 3, p 3.

¹⁹ EB-2020-0219, 1112308 Ontario Inc. and 2394561 Ontario Inc. Interrogatory Responses, November 16, 2020, p 2 [Abell Interrogatory Responses].

²⁰ *Ibid*.

²¹ EB-2019-0097, Imperial Oil Environmental Report, February 2019, p 48 of PDF; p 4-9.

²² *Ibid*, p 5-6; EB-2019-0097, City of Toronto Evidence, December 13, 2019, Tab 4, p 1.

²³ EB-2020-0219, Imperial Oil Interrogatory Responses, November 16, 2020, p 30.

²⁴ Leave to Construct Decision, *supra* note 2, p 31.

²⁵ EB-2020-0219, Procedural Order No. 1, p 4.

21. OEB decision-making must be consistent with the Provincial Policy Statement ("PPS"). This is set out in section 3(5) of the *Planning Act*,²⁶ the PPS,²⁷ and in the OEB's Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario (the "Environmental Guidelines").²⁸ The Divisional Court held that "consistent with" requires following the PPS, not merely taking it into account.²⁹
22. Indemnification is consistent with and supports the following PPS provision:
- Major facilities and sensitive land uses should be designed, buffered, and/or separated from each other to prevent or mitigate adverse effects from contaminants, and to minimize risk to public health and safety.³⁰
23. The PPS requires the protection, improvement, or restoration of water quality and quantity, as well as mitigating adverse effects from contaminants.³¹
24. The Environmental Guidelines require predicting potential environmental impacts during construction and operation, and describing all reasonable mitigation measures.³² They also require the consideration of effects on natural areas, parks, municipal drinking water intakes, and areas downstream of watercourse crossings.³³
25. Imperial has not presented any evidence in this motion that the TSSA has been made aware of the presence of a pesticides storage facility adjacent to the proposed realignment, or that the interaction of the pipeline and the pesticides storage facility falls within the mandate of the TSSA.

²⁶ RSO 1990, c P13

²⁷ Provincial Policy Statement, 2020, under the *Planning Act*, p 2 [PPS]

²⁸ Ontario Energy Board, Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition, p 28 [Environmental Guidelines].

²⁹ *R & G Realty Management Inc v North York (City)*, [2009] OJ No 3358, paras 20-21.

³⁰ PPS, *supra* note 29, s 1.2.6.1

³¹ PPS, *supra* note 29, ss 1.2.6.1, 2.2.1

³² Environmental Guidelines, *supra* note 30, p 13.

³³ *Ibid*, pp 23, 29, 37.

H. CONCLUSION

26. In Toronto's view, Imperial has provided insufficient information to permit the public interest assessment of its motion. In particular, there are no routing studies, no correspondence from the Ministry of Transportation or HONI regarding alleged route constraints, and limited environmental information.

27. Should the OEB approve the proposed realignment, Toronto requests Conditions of Approval requiring Imperial to indemnify it from expenses or damages related to the realignment.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

November 30, 2020



Nicholas Rolfe
City of Toronto Legal Service