

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c.15 (Schedule B);

**AND IN THE MATTER OF** an application by Imperial Oil for  
an Order or Orders pursuant to section 90(1) of the *Ontario  
Energy Board Act, 1998* for leave to construct 63 kilometers  
of 12-inch diameter pipeline for transportation of refined  
petroleum products and from its facility in the City of Hamilton  
to its facility in the City of Toronto and permission for an  
adjustment of the route of the pipeline.

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**1112308 ONTARIO INC. and 2394561 ONTARIO INC.  
ARGUMENT-IN-CHIEF**

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TO: All parties registered in EB-2020-0219

## INTRODUCTION

1. 1112308 ONTARIO INC. and 2394561 ONTARIO INC. (collectively “**Abell Properties**”) are the owners of lands that will be directly impacted by the Imperial Oil Limited (“**Imperial Oil**”) motion seeking approval to re-route a segment of its Sarnia Products Pipeline through additional lands, including those owned by Abell Properties.

2. Abell Properties are the owners of lands municipally known as 1 & 7 Meridian Road and 151 Skyway Avenue in the City of Toronto. A longstanding tenant of Abell Properties, Gardex Chemicals Ltd., operates a facility with a substantial collection of chemicals that are flammable and combustible liquids used in the structural and pesticide industry at 1 and 7 Meridian Road. These chemicals require special consideration in respect of the response to any fire.

3. On September 2, 2020, the Ontario Energy Board (the “**OEB**”), gave notice that Imperial Oil was seeking permission to make an adjustment to the route of a petroleum products pipeline.<sup>1</sup> Imperial Oil’s proposed realignment affects several property owners, including Abell Properties, that were not on the original route of the pipeline as approved on March 12, 2020<sup>2</sup> as the proposed pipeline was not going to be installed in close proximity to these newly impacted property owners.

4. The stated purpose for the proposed realignment is:

Imperial seeks approval of the Realignment in response to a request to move the Project outside of a Ministry of Transportation (“MTO”) right of way to allow for future expansions of Highway 401. In response to MTO’s request, Imperial proposes to relocate the Project route outside of the right-of-way so that the pipeline will cross Highway 27 approximately 800 meters north of its current location. The length of the Realignment is approximately 1850 metres, as compared to the previous alignment length of approximately 1370 metres. The objective of the Realignment is to comply with the MTO’s request, while

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<sup>1</sup> September 2, 2020 Ontario Energy Board Notice of Hearing A Motion and Procedural Order No. 1.

<sup>2</sup> Ontario Energy Board Decision and Order of E. Elsayed, R. Doods and M. Janigan, EB-2019-0007, March 12, 2020, leave to construct Waterdown to Finch Project.

maintaining the proposed pipeline within the utility corridor as much as is practicable.

The Realignment has been designed to comply with the MTO request, as well as the requirement of Hydro One Networks Ince (“HONI”) that any proposed rerouting not impact an existing substation, as such lands need to remain unencumbered for future expansion.<sup>3</sup>

5. As set out above, Imperial Oil has stated there was a request from Hydro One Networks Inc. (“**Hydro One**”) that any proposed re-routing not impact its existing use (a substation) and unencumbered for future expansion and to not impact the MTO’s right of way.

6. The proposed realignment in this area is approximately 800 metres north of its currently approved location. See Appendix “A” to these submissions for the proposed realignment route.

7. Imperial Oil, as the Applicant bears the onus of establishing that the proposed re-routing is in the public interest. To that end, Imperial Oil needs to establish through the evidence, that its proposal satisfies the public interest. Public interest incorporates both the location and the method by which the project will be carried out. Abell Properties submits that public safety is a paramount consideration in determining what is in the public interest.

8. Abell Properties submits that Imperial Oil has not discharged its onus to demonstrate that the proposed re-routing in this motion is in the public interest. In the alternative, if the Board determines that the proposed route is in the public interest, Abell Properties submits that additional conditions should be imposed to ensure the public interest is protected with respect to the Abell Properties to mitigate the risk to public safety, human health and environmental protection. Further, Abell Properties submits that certain commitments made in answers to interrogatories with respect to valve locations and above ground works should form conditions of the OEB’s approval, if granted, to ensure the public interest is satisfied.

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<sup>3</sup> September 18, 2020, Imperial Oil submission at page 1.

## **ARGUMENT**

### **A. OVERVIEW**

9. Abell Properties does not oppose and takes no position on the overall project and the substance of Imperial Oil's argument with respect to the need or benefit of the overall pipeline.

10. Abell Properties submits that proposed realignment is not in the public interest and in the alternative; if the OEB determines that the route is in the public interest should cross the Abell Properties, it submits that there are reasonable and appropriate conditions for mitigation measures to reduce the possibility of impact on human health and environmental impact that should be imposed on Imperial Oil's project as condition(s) of approval.

11. Abell Properties has advised the OEB that its current use of its property includes Gardex Chemicals Ltd., which operates a facility with a substantial collection of chemicals that are flammable and combustible liquids used in the structural and pesticide industry at 1 and 7 Meridian Road. Abell Properties has filed evidence that demonstrates there is a fire safety risk where a fire may occur at its subject property which should be taken into account by the OEB in its assessment of the public interest and Imperial Oil's motion to re-route the planned course of the subject pipeline.

### **B. THE PROPOSED REALIGNMENT AND REASONABLE ALTERNATIVES**

12. Imperial Oil, in this motion, requests a significant deviation from its approved route. The proposed deviation is non-linear and circuitous and brings the pipeline close to the Abell Properties and gives rise to additional risks referenced above. It takes a much further northward triangle shape than would be reasonably required for a direct routing. The OEB granted leave to construct without any consideration of the present route alternative and in the absence of input from the landowners that are impacted by the current proposed re-routing. As such, the previous

findings of the OEB that the overall project was in the public interest based upon the proposed route is informative but not determinative of the public interest in the present motion.

13. Abell Properties submits that Imperial Oil only considered minimal routing options and did not complete a detailed consideration of potential routing options that would be direct, have minimal impact on fewer landowners and that would mitigate potential risks. Attached as Appendix "B" to these submissions is the mapping denoted as OEB-1 in Imperial Oil's answers to interrogatories. Further, a detailed analysis of the various alternatives does not clearly establish that Imperial has weighed the appropriate factors in considering the public interest for each option, let alone establish that the factors have been given appropriate consideration and weighting.

14. A detailed consideration of routing alternatives, if done, would likely demonstrate that there are more direct routes, including through Hydro One lands, that would meet Imperial Oil's objective for delivering its project without impacts on several landowners, including Abell Properties. Imperial Oil has not discharged its onus to demonstrate why the project could not go through the Hydro One lands other than stating this is at the request of Hydro One to avoid its lands, including for Hydro One's desire for future expansion and redevelopment. Abell Properties submits that a request from Hydro One is not a sufficient basis to conclude that locating the subject line off of its lands is the most appropriate routing of the subject pipeline. An alternative route that would traverse the Hydro One lands should be reasonably studied and not disregarded solely due to a request from Hydro One. Abell Properties has made a similar request, which was not considered by Imperial Oil as a 'constraint'.

15. Could other proposals have achieved the desired impact of avoiding the MTO lands and the Hydro One lands? Could the Highway 27 crossing have been shifted slightly to avoid the Abell properties? Abell Properties does not and could not be expected to have the resources nor

the expertise to answer such questions and it was Imperial Oil's obligation to do so in the evidence.

16. A review of mapping contained in Appendix "A" shows that Imperial Oil could conceivably locate its line through the Hydro One lands with PIN 074240163. Imperial Oil in its answers to interrogatories has demonstrated it did not consider this acquisition because Hydro One did not want to grant an easement because of its unspecified future redevelopment plans and a desire to not have its property encumbered. Abell Properties submits that this is not a sufficient reason to reject the entire possibility and conclude that it is not feasible to cross the subject lands resulting into an impact for far more landowners, including Abell Properties, with an indirect route.

17. Imperial Oil submits that the proposed realignment is the only 'feasible routing option' for the project.<sup>4</sup> However, without a detailed analysis of different options that remains unproven as the route design appears to be made to the benefit of Hydro One Networks to ensure its lands are minimally impacted to the detriment of other landowners, including Abell Properties, rather than a deliberate consideration of the various interests. In answers to Interrogatories from the City of Toronto, Abell Properties and the OEB, Imperial Oil has failed to demonstrate that reasonable alternatives were sufficiently studied and considered. Hydro One's preference and the potential quantum of its compensation claim is not a basis to determine a preferred route in the public interest. Imperial Oil is not a rate regulated utility, but rather a private person pursuing a private interest. Abell Properties submits that the proposed route is not the only feasible option and that Imperial Oil and its motion to the OEB should be refused, or detailed and studied alternatives should be presented to the OEB for the OEB's determination of the appropriate route in the public interest.

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<sup>4</sup> September 18, 2020, Imperial Oil Submission at p. 2.

18. Abell Properties submits that Imperial Oil did not make sufficient inquiries and did not have regard for its current use of its lands in making its proposed routing decision. For example, in answers to interrogatories, Imperial Oil has not demonstrated any specific inquiries have been made to local fire officials and the applicable fire chiefs or the Ministry of the Environment, Conservation and Parks with respect to potential risks and impacts to third party human health and the environment. This obligation should not rest on Abell Properties to further demonstrate this issue. The issue has been raised with Imperial Oil and it is the obligation and onus of Imperial Oil to make direct inquiries and ensure its proposed program, with knowledge of existing uses, is in the public interest. This is applicable both to the routing decision and to specific mitigation for the Abell Properties.

19. As a result, Abell Properties submits that Imperial Oil has not discharged its onus to demonstrate that the proposed significant deviation from its approved route is in the public interest.

### **C. APPROPRIATE MITIGATION MEASURES IF THE PROPOSED ROUTE IS APPROVED**

20. Abell Properties submits that in the event the OEB approves Imperial Oil's proposed route, that there are certain appropriate mitigation measures that should be required for the segment of the line that crosses its property, including:

- (a) no above ground infrastructure on Abell Properties;
- (b) no valve stations located on the Abell Properties or in close proximity the property line;
- (c) the construction and maintenance of a retaining wall to protect the pipeline infrastructure; and

(d) minimum interference with tenants and operations.

**(a) Conditions Incorporating Imperial Oil's Responses to Interrogatories**

21. In responding to the interrogatories and communications with Imperial Oil, certain commitments have been made by Imperial Oil. Abell Properties submits these commitments should be included in any approval issued by the OEB such that they are enforceable given Imperial Oil's commitments in the evidence.

22. With respect to no above ground infrastructure, in the answers to interrogatories, Imperial Oil confirmed that the program for the Abell Properties has been modified and there will be no above ground infrastructure on the Abell Properties.<sup>5</sup> We understand this is not at issue and that this should form a required condition on OEB's approval of the route, if granted.

23. With respect to the valve stations, in the answers to interrogatories, Imperial Oil confirmed that the program for the Abell Properties has been modified and there will be no valve stations on the Abell Properties.<sup>6</sup> We understand this is not at issue and that this should form a required condition on OEB's approval of the route, if granted.

24. Imperial Oil has made commitments to maintain access for tenants and operations. Abell Properties submits that provisions should be required during construction to ensure that full truck turning movements and vehicular access and use will not be disrupted and will be fully maintained on its properties during the construction of Imperial Oil's infrastructure.

**(b) the construction and maintenance of a retaining wall to protect the pipeline infrastructure**

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<sup>5</sup> November 19, 2020, Imperial Oil Answers to Interrogatories at p. 29 of 34.

<sup>6</sup> *Ibid.*



25. Abell Properties has made inquiries with the local area fire officials of recommendations to protect the pipeline infrastructure in the event of a chemical fire at the Abell Properties. In order to minimize any run off water, in the event of a fire, our client submits that a retaining wall or containment unit be constructed on the south east corner of the 151 Skyway property by Imperial Oil as a condition to its suggested re-routing approval. The retaining wall would have drain holes in the bottom to let the rain water through and the ability to prevent the discharge of contaminated water the event of the fire. Any contaminated runoff would then have to be vacuumed out and disposed of as hazardous waste.

26. The benefit to Imperial Oil installing the wall at their expense would be no disruption in their pipeline in the event of fire.

27. Without a retaining wall the run off would contaminate the soil in that entire area requiring removal in order to mitigate potential contamination of Mimico Creek. How deep and extensive this would be depends on the amount of runoff, and extensive soil sampling. This could result in Imperial Oil having to cap off the pipe line.

## **CONCLUSION**

28. Abell Properties submits that Imperial Oil has not discharged its onus to demonstrate the proposed deviation from its approved route is in the public interest. As a result, Abell Properties submits that the OEB should reject Imperial Oil's motion. It would be open to Imperial Oil to make a further motion to the OEB with a reviewed and refined study of alternatives.

29. In the alternative, Abell Properties submits that the OEB should impose certain conditions on the Project, two of which have been directly consented to by Imperial Oil in its answers to interrogatories. There should be (a) no above ground infrastructure on Abell Properties; (b) no valve stations located on the Abell Properties or in close proximity to its property line; (c) the

construction and maintenance of a retaining wall to protect the pipeline infrastructure on 7 Meridian Road; and (d) minimum interference with tenants and operations at the Abell Properties including maintaining access during construction.

All of which is respectfully submitted.

1112308 Ontario Inc. and 2394561 Ontario Inc.  
By Its Counsel

A handwritten signature in blue ink, appearing to read "Scott Stoll" followed by a flourish.

Scott A. Stoll and Ajay Gajaria

# Appendix "A" Proposed Realignment

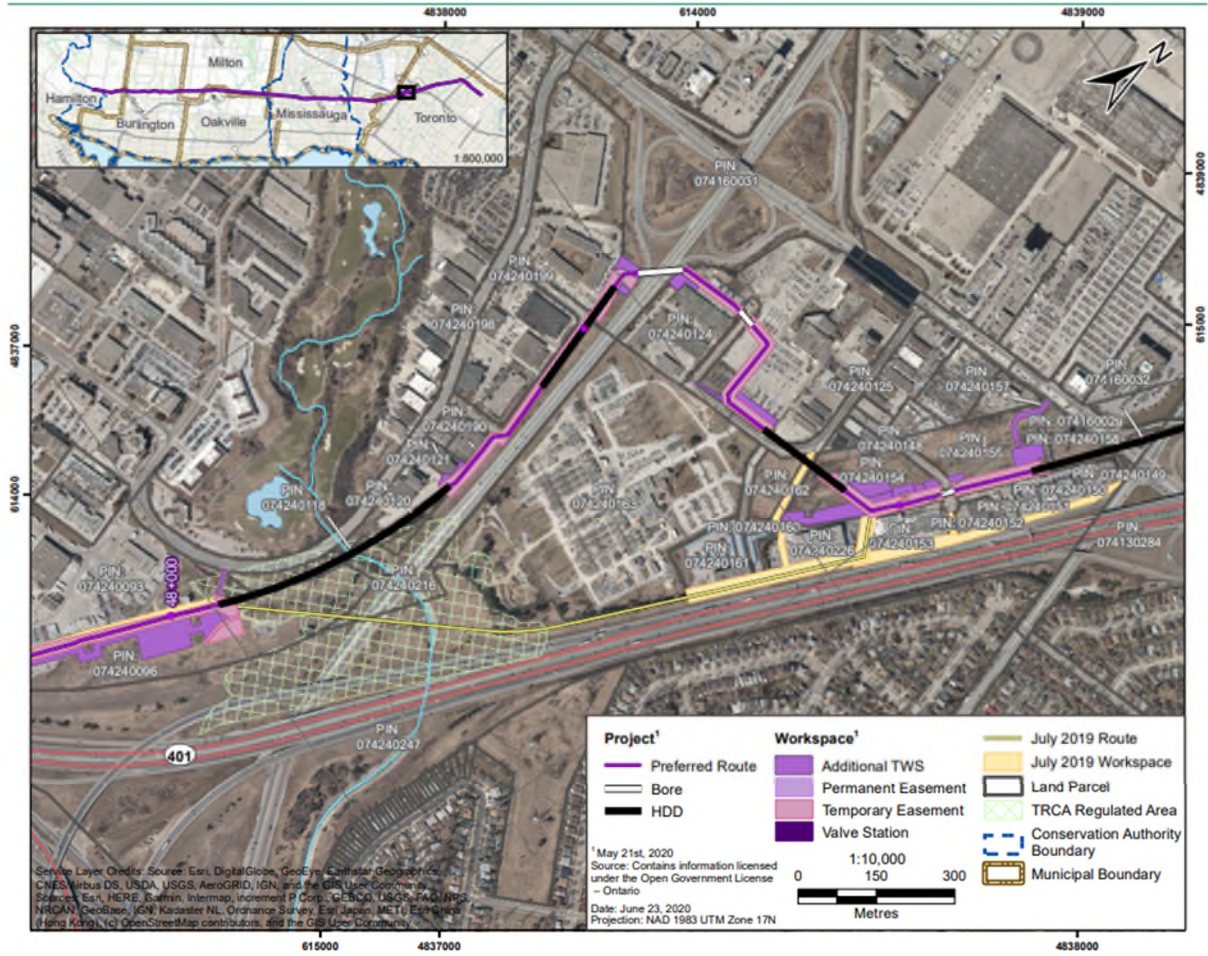
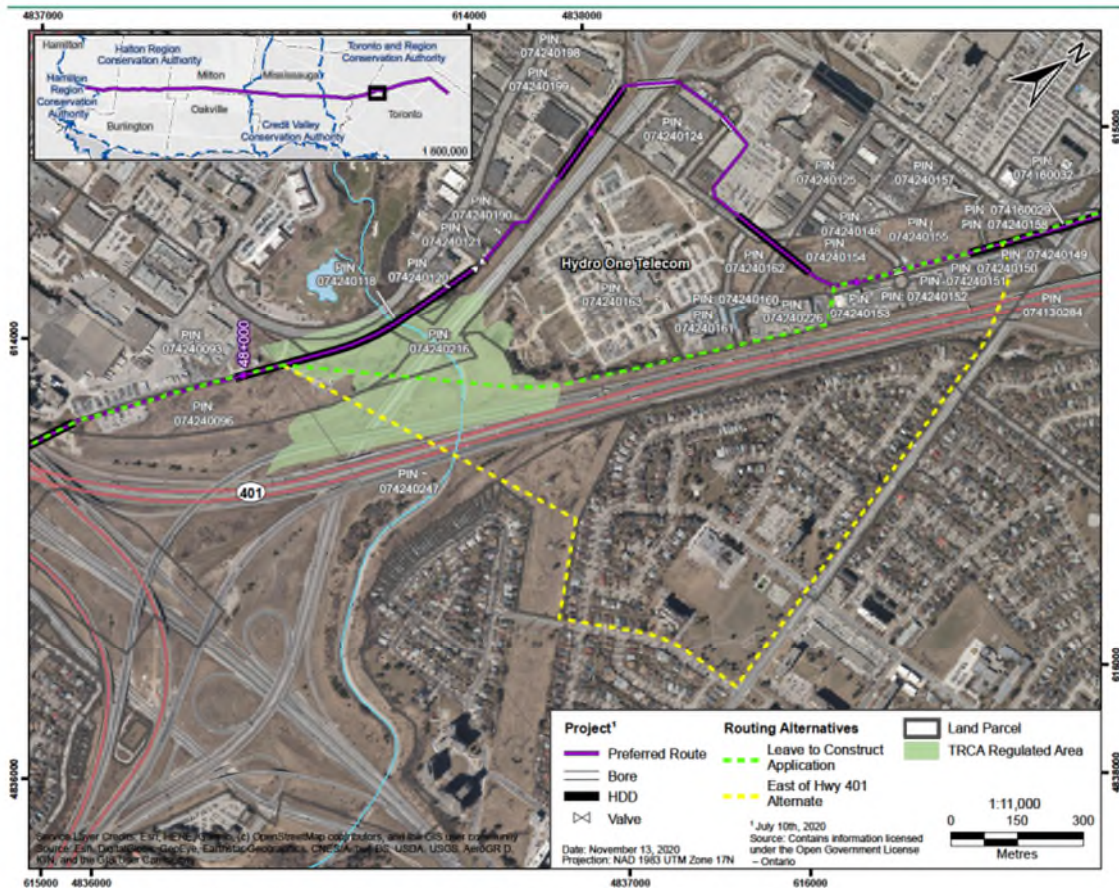


Figure 2: Highway 401/Highway 27 Crossing Realignment

## Appendix "B" Considered Routing Alternatives



**OEB-1: Highway 401/Highway 27 Crossing Realignment**

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Project No.: 0508615-0100

Client: Imperial Oil Limited

GIS # UPR-15-054

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