

**ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** an Motion by Imperial Oil Limited to review and vary a 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.

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**REPLY SUBMISSIONS OF  
IMPERIAL OIL LIMITED**

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December 7, 2020

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## I. OVERVIEW

1. Imperial Oil Limited agrees with the submissions of the Ontario Energy Board Staff that its proposed route realignment be approved, subject to the same conditions as the original decision in this matter.
2. The conditions proposed by the intervenors are not necessary or proper conditions, as such proposed conditions purport to address matters already covered by the original conditions or are matters properly subject to landowner negotiations.

## II. BACKGROUND

3. Imperial Oil Limited (“**Imperial**”) makes these Reply Submissions in support of its motion to the Ontario Energy Board (the “**OEB**” or the “**Board**”) to review and vary the Decision and Order of the Board in EB-2019-0007 (the “**LTC Proceeding**”) dated March 12, 2020 (the “**LTC Decision**”).<sup>1</sup> Imperial does not purport to repeat the submissions made in its Argument-in-Chief in these Reply Submissions. Rather, Imperial’s submissions will respond to certain matters raised by OEB Staff and the intervenors in their written submissions.
4. Imperial maintains that an Order of the Board to vary the LTC Decision, specifically, to vary the approved Project route (the “**Original Route**”) in the manner detailed in Appendix A to the Argument-in-Chief filed by Imperial in this matter on November 23, 2020 (the “**Realignment**”) is in the public interest and should be granted, subject to the conditions proposed by OEB Staff in its Submissions dated November 30, 2020 (“**OEB Conditions**”).<sup>2</sup>
5. In the LTC Decision, the Board concluded that an order granting leave to replace an important segment of Imperial’s Sarnia Products Pipeline (the “**SPPL**”) and 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**”) was in the public interest.
6. Following approval of the Original Route in the LTC Decision, the Ministry of Transportation (“**MTO**”) requested that Imperial move the Original Route outside of the MTO right-of-way to allow for the future expansion of Highway 401 (the “**MTO Requirement**”).<sup>3</sup> In response to the MTO Requirement, Imperial assessed various alternative routes, which were not feasible because they either:
  - (a) would result in increased impacts to residential neighbourhoods; or

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<sup>1</sup> EB-2019-0007, [Decision and Order](#), dated March 12, 2020 [LTC Decision].

<sup>2</sup> EB-2020-0219, [Submissions of OEB Staff](#), dated November 30, 2020 [Staff Submissions].

<sup>3</sup> EB-2020-0219, [Motion and Evidence of the Applicant](#), dated September 25, 2020 at p 1 [Motion and Evidence].

- (b) would not be compliant with the requirement of Hydro One Networks Inc. (“**HONI**”) that the Project’s route not impact an existing HONI substation, as such lands need to remain unencumbered for future expansion (the “**HONI Requirement**”).<sup>4</sup>
7. Having assessed all feasible alternatives to the Original Route, Imperial has determined that the Realignment is the only feasible route for the Project. The Realignment has been designed in a manner which will not result in any additional environmental impacts as compared with the Original Route and will reduce impacts to residential landowners while complying with the MTO Requirement and the HONI Requirement.
8. As such, Imperial agrees with OEB Staff’s conclusion that “the Route Realignment should be approved, subject to the same conditions that the OEB imposed to its approval of the Project in the Original Decision”.<sup>5</sup>

### **III. REPLY ARGUMENT**

9. In their written submissions, the City of Toronto (“**Toronto**”) and 112308 Ontario Inc. and 2394561 Ontario Inc. (“**Abell Properties**”) have requested that the Board impose various conditions beyond the OEB Conditions. The conditions requested by Toronto and Abell Properties affect matters such as pipeline design and operations, financial matters, and the terms of land acquisition agreements being negotiated.
10. As set out in further detail below, such conditions are either already covered by the OEB Conditions or are the subject of active landowner negotiations. Imperial submits that the alternate conditions requested by the intervenors are not proper or necessary and should not be imposed by the OEB.

#### **A. Matters Already Covered by the OEB Conditions**

11. Imperial submits that the OEB Conditions are proper. Among others, they will ensure that:
- (a) the Project (including the Realignment) is constructed and the land restored in accordance with the Board’s Decision and Order and the Conditions of Approval;
  - (b) all the recommendations of the Environmental Report are implemented;
  - (c) all commitments made in response to the Ontario Pipeline Coordinating Committee member review are implemented;
  - (d) all impacts of construction are monitored and reported to the OEB;

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<sup>4</sup> Motion and Evidence at p 1.

<sup>5</sup> Staff Submissions at p 3.

- (e) all approvals, permits, licenses and certificates required to construct, operate and maintain the Project are obtained.
12. Imperial agrees with the assessment by OEB Staff that the OEB Conditions are “comprehensive and cover the issues and concerns raised by the intervenors in this proceeding”.<sup>6</sup>
13. The OEB Conditions are consistent with the Environmental Guidelines, which explicitly set out the appropriate conditions for hydrocarbon pipelines at section 6.1—i.e., those proposed by OEB Staff in this matter.<sup>7</sup> These are the same conditions the Board found to be appropriate in the LTC Decision.
14. There is no reason why the Realignment requires conditions beyond those which the Board found to be appropriate in respect of the Project in its entirety. The Realignment will not result in any additional environmental impacts and is subject to Imperial’s Emergency Response Plan (“ERP”), including the *Specific Contingency Plan: Fire – Pipeline* (the “**Fire Plan**”).<sup>8</sup> Both the ERP and the Fire Plan are designed in accordance with all applicable Technical Standards and Safety Authority’s (“TSSA”) requirements. As the Board found in the LTC Decision, the conditions imposed on Imperial at the leave to construct stage ensure that Imperial will satisfy TSSA “pipeline design and safety specifications, pipeline integrity and emergency management requirements”.<sup>9</sup>

**B. Matters Properly Subject to Landowner Negotiations**

15. The intervenors have requested that the Board impose additional conditions which are properly the subject of landowner negotiations, including certain financial assurances and terms of land use and access. While such matters may properly form the terms of agreements with landowners, they are improper as conditions imposed by the Board.
16. In respect of the requests for conditions imposing indemnity requirements, Imperial is already subject to the requirements of both the *Ontario Energy Board Act, 1998* (“OEBA”) and the *Environmental Protection Act* (“EPA”), which impose statutory mechanisms for compensation to landowners in the event of damage.<sup>10</sup> The Board expressly considered the request by Toronto and other intervenors for similar conditions requiring financial assurances in the LTC Proceeding. In the LTC Decision, the Board rejected the request for such conditions, noting that both the OEBA and the EPA impose statutory mechanisms for compensation to landowners in the event of damage and that Imperial has insurance

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<sup>6</sup> Staff Submissions at p 10.

<sup>7</sup> Ontario Energy Board, [Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario](#), 7th ed (2016) at p 64.

<sup>8</sup> EB-2019-0007, [Interrogatory Response from Applicant – Appendices 1 – 16](#), dated August 6, 2019 at Appendix 2, p 3.

<sup>9</sup> LTC Decision at pp 6–7.

<sup>10</sup> [Ontario Energy Board Act, 1998](#), S.O. 1998, c. 15, Sched. B at ss. 98(2), 102, 103; [Environmental Protection Act](#), R.S.O. 1990, c. E.19 at ss 93(1), 99(2).

coverage which include accidental pollution related to environmental exposures.<sup>11</sup> These statutory protections will also apply in respect of the Realignment. There is no reason for the Board to depart from that conclusion in this motion.

17. In respect of requested conditions related to terms of use and access and other land matters, Imperial submits that such matters are properly the terms of landowner agreements, which are currently subject to negotiations between Imperial and landowners. The terms of such agreements are not properly before the Board—the substance of landowner agreements “are left to the landowner and the pipeline company to negotiate”.<sup>12</sup>
18. As the Board approved the forms of agreement in the LTC Decision, the “substance” of agreements specific agreements between landowners and Imperial is a matter solely between the landowners and Imperial. The Board rejected requests for the imposition of similar conditions in the LTC Proceeding on the basis that “details of such agreements will be discussed and customized with each entity based on the specific circumstances”.<sup>13</sup> There is no reason for the Board to depart from that conclusion in this motion.

#### IV. CONCLUSION

19. The Realignment has been carefully designed to reduce impacts to landowners while complying with the MTO Requirement and the HONI Requirement and does not result in any additional environmental impacts. The pipeline has been designed in accordance with all applicable TSSA requirements.
20. The Realignment is the only feasible route for the Project, a proactive and prudent replacement of the existing SPPL to ensure the continued safe, reliable, and environmentally responsible transportation of products throughout the Greater Toronto and Hamilton region for decades to come, with the Board has found is in the public interest.
21. Imperial submits that, in light of these factors, the Realignment is in the public interest and should be approved by the Board on this motion.

#### ALL OF WHICH IS RESPECTFULLY SUBMITTED.

December 7, 2020



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<sup>11</sup> LTC Decision at p 30.

<sup>12</sup> EB-2013-0074, [Decision and Order](#), dated January 30 2014 at pp. 16 – 17.

<sup>13</sup> LTC Decision at p 19.