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BY EMAIL

May 13, 2021

Zahra Allidina
Imperial Oil Limited
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Zahra.allidina@esso.ca

Dear Ms. Allidina:

**Re: Imperial Oil Limited
Application for Expropriation – Waterdown to Finch Project
OEB File Number: EB-2021-0096**

In accordance with Procedural Order No. 2, please find attached the OEB staff Submission for the above proceeding.

Yours truly,

Original Signed By

Zora Crnojacki
Project Advisor

Encl.

c: Patrick Welsh, Applicant's Counsel, Osler, Hoskin & Harcourt LLP,
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WATERDOWN TO FINCH PROJECT Expropriation Application

Imperial Oil Limited

EB-2021-0096

OEB Staff Submission

May 13, 2021

1 INTRODUCTION

Expropriation Application

On February 23, 2021 Imperial Oil Limited (Imperial Oil) applied to the Ontario Energy Board (OEB) under section 99 of the *Ontario Energy Board Act, 1998* (OEB Act), for an order granting approval to expropriate interests in certain lands along a Waterdown to Finch Project pipeline route in the City of Mississauga and the City of Toronto (Application). The Application originally asked for authority to expropriate interests in four properties. Imperial Oil reached agreements with the landowners of two of the four properties and withdrew the Application with respect to those two properties on April 19, 2021. The following two properties remain subject to the Application:

- A property owned by 2394561 Ontario Inc. located in Etobicoke, City of Toronto. Imperial Oil seeks approval for temporary workspace and permanent easements for this property.
- A property owned by 1112308 Ontario Inc. located in Etobicoke, City of Toronto. Imperial Oil seeks approval for temporary workspace and permanent easements for this property.

The properties that are subject to the Application are located at the northeast part of the pipeline route¹. Construction in this area is planned for the summer of 2021². Imperial Oil estimates that the construction affecting the two properties will last five non-consecutive months³. To implement the construction schedule Imperial Oil requested a decision from the OEB no later than June 1, 2021.

OEB staff submits that the approval of the Application is in the public interest and that the OEB should grant Imperial Oil the requested authority to expropriate. OEB staff has also proposed conditions that it submits the OEB should attach to its approval of authority to expropriate. The proposed conditions are attached as Appendix A to this document.

Section 99 of the OEB Act

The OEB's power to grant an applicant authority to expropriate land is derived from section 99 of the OEB Act. Under this section, any person who has been granted leave

¹ Imperial Oil's response to OEB staff interrogatory no. 2 a) Figure 1, map of the project route shows kilometer posts (KP) and location of the properties subject to this Application.

² Imperial Oil response to OEB staff interrogatory no. 5. Construction started at the southwest end of the OEB-approved Route in the City of Hamilton at Waterdown Station at zero to 11th kilometer segment. The properties that are subject to this application are located at the northeast part of the route between KP 45 and KP 50 in the City of Toronto.

³ Imperial Oil response to OEB staff interrogatory no. 5a)

by the OEB to construct certain ‘works’ under section 90 (hydrocarbons) or section 92 (electricity) of the OEB Act may apply for authority to expropriate land for such works⁴.

Subsection 99(5) of the OEB Act establishes the test for approving an application brought under subsection 99(1) and states that, if the OEB is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.

Compensation issues do not fall within the OEB’s jurisdiction under section 99 of the OEB Act and are addressed in accordance with the *Expropriations Act, R.S.O. 1990. C. E 26* (Expropriations Act) and, if required, are resolved by the Board of Negotiations⁵. If the OEB grants authority to expropriate land, absent a settlement with the property owners, Imperial Oil would follow the process set out in the Expropriations Act to determine the amount of compensation to be paid.

Leave to Construct Decision

Under a separate Decision and Order dated March 12, 2020, Imperial Oil received OEB’s approval to construct the Waterdown to Finch Project pursuant to section 90 of the OEB Act (Leave to Construct Decision). The Leave to Construct Decision found that the Waterdown to Finch Project is in the public interest.

The Waterdown to Finch Project consists of approximately 63 kilometers of pipeline and associated facilities to transport refined fuel products from Imperial Oil’s facility in the City of Hamilton to its facility at Finch Avenue in the City of Toronto. In the Leave to Construct Decision the OEB approved, among other things, a route for the project and on December 17, 2020, the OEB approved a modification of the route (OEB-approved Route). The properties subject to this Application are located within the OEB-approved Route. The OEB-approved Route is mostly parallel and adjacent to the existing Imperial Oil pipeline, which will be decommissioned and replaced by the Waterdown to Finch Project. The two properties that are the subject of the Application are not adjacent to the existing pipeline ⁶.

As part of the Leave to Construct proceeding, Imperial Oil received OEB approval, under section 97 of the OEB Act, of the forms of land easement agreements that have been or will be offered by Imperial Oil to all the directly affected landowners⁷. Imperial

⁴ Section 99 of the OEB Act falls under Part VI of the Act and sets out the requirements for leave to construct, expropriation and related matters. A “work” is defined in this part of the OEB Act as a hydrocarbon line, electricity distribution line, electricity transmission line, interconnection or station.

⁵ The Board of Negotiations is an informal tribunal that mediates settlements for compensation when property is expropriated. The Board of Negotiation is part of Environment and Land Tribunals Ontario (ELTO).

⁶ Imperial Oil’s response to OEB staff interrogatory no. 4

⁷ Decision and Order, EB-2019-0007, March 12, 2020

Oil stated that it has offered the agreements in the forms approved by the OEB to the registered landowners whose properties are the subject to this expropriation application⁸.

2. PROCESS TO DATE

The OEB issued its Notice of Hearing (Notice) on March 11, 2021, and directed Imperial Oil to serve the Notice, the Application and relevant evidence on current registered property owners, encumbrancers and those with any interest in the lands directly affected by the expropriation application. The service was completed as directed. The City of Mississauga applied for and was granted intervenor status. None of the other impacted property owners intervened (or have otherwise participated) in the proceeding.

On April 7, 2021, the OEB issued Procedural Order No. 1, setting the procedural schedule for written interrogatories and written submissions. The interrogatory stage was completed by Imperial Oil filing responses to OEB staff interrogatories on May 5, 2021.

On April 19, 2021, Imperial Oil requested to withdraw the portions of its Application to expropriate certain land rights owned by the City of Mississauga and by the Canadian Pacific Railway Company. Imperial Oil advised that it wished to withdraw these portions of the Application because resolutions had been reached with the City of Mississauga and the Canadian Pacific Railway Company.

On April 21, 2021, the OEB accepted Imperial Oil's request to withdraw the specified portions of the Application. On April 21, 2021, the City of Mississauga also modified its status to monitor rather than intervene in the proceeding. Given that Imperial Oil has been able to resolve some of the issues with some of the affected landowners and that there are no intervenors remaining in the proceeding, the OEB issued Procedural Order No. 2 on May 10, 2021 to advance the procedural schedule so that it might issue a decision closer to the June 1, 2021 requested date. OEB staff is filing this submission in accordance with Procedural Order No. 2. Imperial Oil may file a reply to the OEB staff submission by May 20, 2021.

3. SUBMISSIONS

OEB staff's submission is framed to address the following issues⁹:

⁸ Imperial Oil Application, EB-2021-0096, paragraph 15, page 4

⁹ The OEB considered these issues in a recent proceeding (EB-2019-0127) related to NextBridge Infrastructure LP's application for authority to expropriate certain interests in land required to construct the

1. Is the proposed expropriation in the public interest?
2. Are the specific interests in the lands requested for expropriation appropriate?
3. Has Imperial Oil taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties?
4. What conditions, if any, should be attached to the OEB's Order?

1. Is the proposed expropriation in the public interest?

Under section 96(1) of the OEB Act, leave to construct is granted if the OEB is of the opinion that the project is in the public interest. Pursuant to section 96(1) of the OEB Act, the OEB found that the Waterdown to Finch Project is in the public interest.

The issue in the current proceeding, therefore, is not whether the Waterdown to Finch Project itself is in the public interest – the OEB has already made that determination. The issue in this proceeding is whether the specific property rights requested by Imperial Oil through the application to expropriate are in the public interest. OEB staff has assessed this question by considering whether the specific interests in land requested are needed, whether Imperial Oil has taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties, and what conditions (if any) should be attached to the OEB's order.

Based in this analysis described in more detail below), OEB staff submits that the requested expropriations are in the public interest.

2. Are the specific interests in the lands requested for expropriation appropriate?

Imperial Oil seeks the authority to expropriate two types of interests in the affected lands¹⁰:

- Permanent Easements - required for construction and ongoing operation and maintenance of the Waterdown to Finch Project.

East West Tie Project.

¹⁰ Imperial Oil Application (EB-2021-0096) paragraph 19, pages 4 and 5

- Temporary Workspace (TWS) – located adjacent to the new and existing easements for use and access during construction of the Waterdown to Finch Project.

Imperial Oil's evidence¹¹ and responses to OEB staff interrogatories¹² include aerial maps and survey drawings for each property and provide the location and area of the interest in lands on each of the two properties. OEB staff's review of this information confirms that the locations of the specific interests in the properties for which Imperial Oil seeks authority to expropriate are within the OEB-approved Route of the Waterdown to Finch Project. OEB staff accepts Imperial Oil's evidence with respect to the need for these land rights.

OEB staff submits that the locations of the requested Permanent Easements and TWS Easements are appropriate as these are within the OEB-approved Route for the Waterdown to Finch Project. Neither of the property owners that are still subject to this application intervened in the proceeding, nor did they directly provide any information or submissions to cast doubt on the need for the land rights.

3. Has Imperial Oil taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties?

In response to OEB staff's interrogatories, Imperial Oil identified the steps it has taken and is committed to take to minimize the effects of the expropriations on the two affected properties¹³.

The width of the new permanent easement is between 0.3 metres and 10 metres. Imperial Oil determined the dimensions of Permanent Easements based on the requirements for safe access to maintain and inspect the pipeline during operation. Imperial Oil indicated that the Permanent Easements will be accessed for visual inspection and monitoring in accordance with Imperial Oil's maintenance program. Typically, the width of the TWS is 10 metres. The term of TWS rights sought is for five years. Imperial Oil stated that the dimensions of the TWS Easements were determined based on the construction methodology and the minimum space required for safe equipment operation during construction. Imperial Oil requested a five year term for the TWS Easements and explained that the five year term is appropriate for conducting

¹¹ Imperial Oil Application (EB-2021-0096) Appendix D-2 and Appendix D-3

¹² Imperial Oil's response to OEB staff interrogatory 2 b) Figure 2, aerial photo map indicating location and area of land subject to the Application.

¹³ Imperial Oil response to OEB staff interrogatory no. 3

post-construction seasonal land restoration activities and monitoring reporting required by the OEB in the Leave to Construct Decision.

OEB staff submits that the requested permanent and temporary easement area dimensions and locations are appropriate in the circumstances. OEB staff has no concerns with the five year term of the TWS Easement. Neither of the property owners that are still subject to this application intervened in the proceeding, nor was any information or submission filed that suggests that there are significant problems with the requested land rights. Imperial Oil has been directly negotiating with the affected landowners and tenants since February 2019¹⁴. The communications and discussions with the representatives of landowners and tenants involved Imperial Oil's land agent, right-of-way and claims negotiator and Imperial Oil's construction teams.

The record of the communications indicate that the following concerns were being addressed: route alignment and future development, compensation for easements and damages and appraisals¹⁵, impacts on tenant operations, duration of construction and safety in relation to risk of operating the pipeline. Imperial Oil provided a description of mitigation for each of the concerns raised by the landowners and tenants.

OEB staff notes that the proposed conditions of approval, which are accepted by Imperial Oil, require that Imperial Oil seek to address general concerns expressed by the affected landowners and tenants¹⁶.

Imperial Oil also stated that the impacts on the temporary workspace will be limited to the duration of construction. The anticipated impacts are noise and restricted access. Imperial Oil indicated that the access during operation and maintenance of the pipeline would be limited and along the permanent easement. OEB staff notes that Imperial Oil agreed with the conditions of approval proposed by OEB staff that the landowners and tenants be provided with oral and written notice a minimum of 48 hours prior to entry onto the land where TWS and permanent easements are located¹⁷.

OEB staff is of the view that Imperial Oil has demonstrated its commitment to take reasonable and appropriate steps to minimize the impact of the proposed expropriation on the landowners and tenants.

¹⁴ Imperial Oil's response to OEB staff interrogatory no. 1

¹⁵ Compensation matters are not within the scope of the OEB's authority under section 99 of the OEB Act.

¹⁶ OEB Staff Submission, Appendix A, Conditions No. 3,4,5,6,7.

¹⁷ OEB Staff Submission, Appendix A, Condition No. 2

4. What conditions, if any, should be attached to the OEB's Order?

In the interrogatory process OEB staff presented seven draft conditions of approval¹⁸ to Imperial Oil for comment. Imperial Oil reviewed the draft conditions and supported the conditions¹⁹.

OEB staff supports the OEB's approval of the Application subject to the conditions attached in the Appendix A.

All of which is respectfully submitted.

¹⁸ The proposed conditions are largely the same as the conditions that the OEB attached to its approval of NextBridge's expropriation application related to the East West Tie Project (EB-2019-0127).

¹⁹ Imperial Oil response to OEB staff interrogatory no. 6

APPENDIX A

**Imperial Oil Limited
Waterdown to Finch Project– Expropriation Application
EB-2021-0096**

**Imperial Oil Limited, Expropriation Application
Waterdown to Finch Project
Section 99 Order Granting Authority to
Expropriate Interests in Certain Lands**

**PROPOSED CONDITIONS OF
APPROVAL**

1. Imperial Oil shall notify the OEB in writing in the event that, after this Decision and Order has been issued, a negotiated settlement is reached and expropriation is no longer necessary. This notice shall be filed with the OEB within ten days of the settlement.
2. Imperial Oil shall use all reasonable efforts to provide oral and written notice to the landowners a minimum of 48 hours prior to entry onto the land.
3. Reasonable accommodation shall be made in Imperial Oil's schedule for landowner requests/concerns to ensure that pipeline facilities' construction and associated activities do not interfere with landowner operations.
4. Imperial Oil or its agents will consult with the landowner in advance of entry as to the manner in which existing gates / fences / entryways are to be managed while entering property. In the event the landowner cannot be contacted, Imperial Oil shall ensure that gates / fences / entryways used by Imperial Oil personnel or its agents are left as found.
5. The landowners and tenants can be present to observe the pipeline facilities' construction and associated activities subject to Imperial Oil's safety policies and procedures and the Occupational Health and Safety Act.
6. Imperial Oil shall keep records of the personnel attending and entering on lands, the time in which entry occurred and the locations entered.
7. Imperial Oil shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions and shall provide the employee's name and contact information to the OEB and to the landowners and tenants as well clearly posted on the construction site. The project manager will be responsible for the fulfilment of the conditions of approval on the site.