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May 20, 2021

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Ottawa

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

Vancouver

New York

Dear Ms. Long:

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

Further to Procedural Order No. 2 dated May 10, 2021, please find enclosed the Written
Reply Submissions of Imperial Oil Limited.

Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,

Patrick G. Welsh

Patrick Welsh
Partner

PW:IC

c: Richard King/ Isabelle Crew, Osler Hoskin & Harcourt LLP
Zahra Allidina, Imperial Oil Limited

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998 (the “**Act**”);

AND IN THE MATTER OF section 99(1) of the Act;

AND IN THE MATTER OF an application by Imperial Oil Limited for an Order or Orders granting authority to expropriate land for the purpose of constructing and operating a hydrocarbon distribution pipeline and ancillary facilities to serve the Greater Toronto and Hamilton Area.

EB-2021-0096

REPLY SUBMISSIONS of IMPERIAL OIL LIMITED

May 20, 2021

I. OVERVIEW

1. On March 12, 2020, Imperial Oil Limited (“**Imperial**”) obtained leave to construct (the “**LTC Decision**”) approximately 63 kilometres of pipeline and associated infrastructure to transport refined fuel products from its facility in the City of Hamilton to its facility in the City of Toronto (the “**Project**”).¹
2. The Project is a proactive replacement of an important segment of Imperial’s Sarnia Products Pipeline (the “**SPPL**”). Operating safely for many decades, the SPPL is crucial infrastructure that provides refined fuel products (i.e., gasoline, diesel, and jet fuel) used by households and businesses across the Greater Toronto and Hamilton Area. To support continued safe, reliable, and environmentally responsible transportation of these products, the Project will replace the transportation capabilities of an existing SPPL segment between rural Hamilton and North York.
3. The Project will traverse 319 directly affected parcels representing 71 privately-owned lands and 248 agency-owned lands and will require a combination of new and existing easements, including permanent and temporary land rights. Despite Imperial’s ongoing efforts to reach voluntary settlements with all directly affected landowners, by February 2021, Imperial was unable to reach settlement with four landowners along the Project route.
4. In an effort to preserve its construction schedule, on February 23, 2021, Imperial applied to the Ontario Energy Board (the “**Board**”) under section 99 of the *Ontario Energy Board Act*² (the “**Act**”) for an order or orders granting approval to expropriate certain interests in properties along the Project route (the “**Application**”).³
5. Imperial requires authority to expropriate such interests in land in order to construct and operate the Project as previously approved by the Board. The type, location, size, and

¹ EB-2019-007, [Decision and Order](#), dated March 12, 2020 [LTC Decision].

² *Ontario Energy Board Act, 1998*, [S.O. 1998, c. 15, Sched. B](#) at s. 99 [OEBA].

³ EB-2021-0096, [Application and Evidence](#), dated February 23, 2021 [Application]

duration of the interests sought are appropriate and consistent with the Board's prior decisions in respect of the Project, as well as established construction and engineering standards. Imperial has and continues to take reasonable steps to minimize the impact of the proposed expropriation on the properties and landowners subject to the Application.

6. Imperial agrees with the submissions of Board Staff filed May 13, 2021 that the approval of the Application is in the public interest and that the Board should grant Imperial the requested authority to expropriate, subject to conditions proposed by Board Staff.⁴

II. BACKGROUND

4. On February 25, 2019, Imperial applied to the Board pursuant to sections 90 and 97 of the Act for an order granting leave to construct the Project and an order approving the forms of land access agreements related to the construction of the Project (the "**LTC Application**").⁵
5. On March 12, 2020, the Board issued its Decision and Order granting leave to Imperial pursuant to section 90(1) of the Act to construct the Project and approving the proposed forms of land access agreements that Imperial had or would offer to each owner of land affected by the approved pipeline route for the Project.⁶
6. On June 30, 2020 Imperial filed a request (the "**Change Request**") for an approval of three changes to the Project route as approved in the LTC Decision (the "**Original Route**").⁷ On September 2, 2020 the OEB commenced a proceeding for a motion to review and vary the LTC Decision, specifically to vary the Original Route (the "**Realignment**").⁸ On December 17, 2020, the Board issued a Decision and Order approving the Realignment

⁴ EB-2021-0096, [OEB Staff Submissions](#), dated May 13, 2021 [Staff Submissions].

⁵ EB-2019-0007, [Application and Evidence of Imperial Oil Limited for Leave to Construct](#), dated May 29, 2019 [LTC Application].

⁶ EB-2019-0007, [Decision and Order](#) (12 March 2020) at p. 31.

⁷ EB-2019-0007, [Notification of Updates to Project Routing](#), dated June 30, 2020.

⁸ EB-2020-0219, [Notice and Procedural Order No. 1](#), dated September 2, 2020.

(the “**Realignment Decision**”) on the same terms and conditions contained in the LTC Decision.⁹

7. Since 2019, Imperial and its agents haven undertaken extensive negotiations with landowners along the Project route to secure the interests in land required to construct the Project as approved by the LTC Decision and the Realignment Decision. To date, Imperial has entered into 99 agreements with 94 landowners. Despite Imperial’s ongoing efforts to reach voluntary settlements with all directly affected landowners, by February 2021, Imperial had reached agreements with all but four landowners.
8. On February 23, 2021, in an effort to maintain its construction schedule, Imperial applied under section 99 of the Act for an order or order granting approval to expropriate interests in four properties along the Project route.
9. During the course of the Application, Imperial successfully reached voluntary resolution with two of the four landowners and withdrew its application in respect of those properties. As a result, two properties remain subject to the Application — WTFN4076 and WTFN4077 (the “**Subject Properties**”).¹⁰ Neither of the owners of the Subject Properties the “**Landowners**”) intervened in this proceeding.
10. On April 7, 2021, the Board issued Procedural Order No. 1, setting the procedural schedule for written interrogatories and written submissions.¹¹
11. On May 5, 2021, Imperial filed responses to Board Staff interrogatories.¹²

⁹ EB-2020-0219, [Decision and Order](#), dated December 17, 2020 [Realignment Decision].

¹⁰ Application at Appendix D-2 and Appendix D-3.

¹¹ EB-2021-0096, [Procedural Order No. 1](#), dated April 7, 2021.

¹² EB-2021-0096, [Interrogatory Response of Imperial Oil Limited](#), dated May 5, 2021 [Imperial IRR].

12. On May 10, 2021 Board issued Procedural Order No. 2, in which it updated the procedural schedule for written submissions.¹³
13. In accordance with Procedural Order No. 2, on May 13, 2021, Board Staff filed submissions (“**Staff Submissions**”). The Staff Submissions concluded that, in the opinion of Board Staff, “the approval of the Application is in the public interest and that the OEB should grant Imperial Oil the requested authority to expropriate”,¹⁴ subject to certain conditions proposed by Board Staff (the “**Proposed Conditions**”)¹⁵ and accepted by Imperial.¹⁶

III. ARGUMENT

A. Section 99 of the Act

14. The Board’s authority to grant an applicant authority to expropriate land is derived from section 99 of the Act. Pursuant to section 99(1), any person who has been granted leave by the Board to construct under Part IV may apply to the Board for authority to expropriate land for work.¹⁷ In the LTC Decision, the Board granted Imperial leave to construct the Project (a “work” as defined at section 89 of the Act),¹⁸ pursuant to section 90(1), being under Part IV of the Act.¹⁹
15. In determining whether to grant authority to expropriate, the Act provides the Board with the following direction:

¹³ EB-2021-0096, [Procedural Order No. 2](#), dated May 10, 2021.

¹⁴ Staff Submissions at pp. 3, 9.

¹⁵ Staff Submissions at Appendix A.

¹⁶ Imperial IRR at OEB-6.

¹⁷ OEBA at s. 99(1).

¹⁸ Section 89 of the Act defines “work” as “a hydrocarbon line, electricity distribution line, electricity transmission line, interconnection or station”.

¹⁹ LTC Decision at p. 1.

99 (5) If after the hearing the Board 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.²⁰

16. In determining whether an expropriation is in the public interest under subsection 99(5), the Board has applied the following public interest considerations:²¹

1. Is the proposed expropriation in the public interest?
2. Are the specific interests in the lands requested for expropriation appropriate?
3. Has [the applicant] taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties?
4. Is [the applicant's] decommissioning and abandonment plan appropriate and reasonable?
5. Has the impact of the proposed expropriation on the landowner[s] been minimized?
6. What conditions, if any, should be attached to the OEB's order?

17. Importantly, compensation issues do not fall within the Board's jurisdiction under section 99 of the Act and are addressed in accordance with the *Expropriations Act*.²²

B. The proposed expropriation is in the public interest

18. In assessing the first public interest consideration, the Board has found that the first consideration is met where:²³

- (a) the Board has previously assessed the subject work and found that its construction and operation is in the public interest;
- (b) the Board is satisfied that the public interest with respect to the subject work was fully examined during the leave to construct proceeding; and

²⁰ OEBA at s. 99(5).

²¹ See e.g., EB-2019-0127, [Decision and Order](#), dated September 12, 2019 (Corrected December 3, 2019) at p. 4.

²² EB-2019-0127, [Decision and Order](#), dated September 12, 2019 (Corrected December 3, 2019) at p. 4.

²³ EB-2019-0127, [Decision and Order](#), dated September 12, 2019 (Corrected December 3, 2019) at p. 6.

- (c) the work may be completed as approved only if all necessary land rights for construction and operation of the subject work are acquired by the applicant.
19. All three elements are established in this case.
20. First, it is well established that the Board has previously assessed the Project and granted Imperial leave to construct, having found, pursuant to section 96 of the Act, that the Project was in the public interest.²⁴
21. Second, the Board's assessment of the Project has been extensive. In the LTC Decision, the Board fully assessed the public interest with respect of the Project, including: the need for the Project, the availability of alternatives and the appropriateness of the Project route;²⁵ the environmental impacts of the Project;²⁶ the forms of agreement to be provided to landowners and other land matters;²⁷ and Indigenous consultation.²⁸
22. In the Realignment Decision, the Board further approved the Realignment as being in the public interest,²⁹ having considered: the need for the Realignment and the appropriateness of the route;³⁰ the environmental impacts of the Realignment;³¹ the adequacy of consultation and accommodation of the Landowners;³² safety and emergency response matters;³³ and Indigenous consultation.³⁴

²⁴ LTC Decision at p. 31.

²⁵ LTC Decision at pp. 8–9.

²⁶ LTC Decision at p. 14.

²⁷ LTC Decision at p. 19.

²⁸ LTC Decision at p. 23.

²⁹ Realignment Decision at p. 13.

³⁰ Realignment Decision at p. 5.

³¹ Realignment Decision at pp. 6–7.

³² Realignment Decision at p. 8.

³³ Realignment Decision at pp. 10–11.

³⁴ Realignment Decision at p. 12.

23. Third, the Project can only be completed as-approved if Imperial obtains the interests in the Subject Properties sought in this Application. These interests are required for the construction and operations of the Project as approved by the LTC Decision and Realignment Decision.³⁵

C. The specific interests in the lands requested for expropriation are appropriate

24. The particulars of the interests sought by Imperial are detailed in Appendices D-2 and D-3 of the Application, with additional information provided in response to Staff interrogatories.³⁶

25. Imperial has sought to expropriate the following interest types:

(a) **New Permanent Easements:** The Project will use a portion of the existing easement to minimize the total new permanent easements required. New permanent easements are required in addition to the existing easement in certain locations on fee simple lands. The new permanent easements sought in respect of the Subject Properties are 3.0 metres wide.³⁷ Owners of land over which new permanent easements have been presented the Grant of Easement Agreement as approved by the OEB in the LTC Decision.³⁸

(b) **Temporary Workspaces:** Temporary workspaces (“TWS”) are required adjacent to the new and existing easements and will be used to store material, string and weld segments of pipe and as workspace to install the pipeline.³⁹ Owners of land

³⁵ Application at pp. 5–6.

³⁶ Application at Appendix D-2, Appendix D-3; Imperial IRR at Figure 2.

³⁷ Application at p. 5; Application at Appendix D-2, Appendix D-3; Imperial IRR at Figure 2.

³⁸ EB-2019-0007, [Argument in Chief](#), dated January 10, 2020, Appendix B, pp. 33–45.

³⁹ Application at p. 5.

over which TWS are required have been presented the Temporary Workspace Lease Agreement as approved by the OEB in the LTC Decision.⁴⁰

26. The locations of the requested Permanent Easements and TWS are located within the Project route as previously approved by the Board.⁴¹
27. The dimensions of the TWS sought were determined based on the construction methodology and minimum space required for safe equipment operation during Project construction. Permanent Easement requirements were determined based on the area required to safely access and maintain the pipeline throughout operation.⁴²
28. The duration of the TWS sought is consistent with the 5-year term established in the Temporary Workspace Lease Agreement, as previously approved by the Board in the LTC Decision. The duration of the TWS is further consistent with the conditions of the LTC Decision, which require post-construction monitoring.⁴³
29. Imperial submits that the type, location, size, and duration of the interests sought are appropriate. Such interests are consistent with the Board's prior decisions in respect of the Project, as well as established construction and engineering standards.

D. Imperial has taken reasonable steps to minimize the impact of the proposed expropriation on the Subject Properties and Landowners

30. As set out above, the interests sought by Imperial in this Application are designed to be minimally invasive while remaining consistent with the conditions imposed by the Board in the LTC Decision and Realignment Decision, as well as established construction and engineering standards.

⁴⁰ EB-2019-0007, [Argument in Chief](#), dated January 10, 2020, Appendix B, pp. 46–62.

⁴¹ Staff Submissions at p. 5; Application at Appendix D-2, Appendix D-3; Imperial IRR at Figure 2.

⁴² Imperial IRR at OEB-3(d).

⁴³ Imperial IRR at OEB-3(c).

31. As the Board has found previously, “the proposed Route Realignment is appropriate in terms of minimizing the impact on landowners”.⁴⁴ The Subject Properties are located along the Realignment.
32. Imperial’s preferred approach to acquiring land rights for the Project has been through negotiation of mutually acceptable agreements with landowners. Imperial’s agents have been working in the area of the Project since Summer 2018.⁴⁵
33. Since March 2020, Imperial has been and continues to engage in ongoing consultation and negotiation with the Landowners in order understand and respond to their concerns.⁴⁶
34. Imperial, the Landowners, the Landowners’ tenants (the “**Tenants**”) and their respective counsel have engaged in ongoing discussions on a without prejudice basis regarding the Subject Properties. Communications have also been advanced between Imperial’s land agent, right of way & claims coordinator, and construction teams and representatives of the Landowners and Tenants. In response to interrogatories from Board Staff, Imperial provided a log documenting these ongoing negotiations and consultations as well as a list of concerns of the Landowners and Tenants and Imperial’s responses to such concerns.⁴⁷
35. Furthermore, as noted by Board Staff, the Proposed Conditions, which have been accepted by Imperial, require that Imperial seek to address general concerns expressed by the Landowners and Tenants.⁴⁸

⁴⁴ Realignment Decision at p. 5.

⁴⁵ Application at p. 3.

⁴⁶ Imperial IRR at OEB-1 and Appendix 1.

⁴⁷ Imperial IRR at OEB-1 and Appendix 1.

⁴⁸ Staff Submissions at p. 6.

36. Imperial agrees with the finding of Board Staff that Imperial has demonstrated its commitment to take reasonable and appropriate steps to minimize the impact of the proposed expropriation on the Subject Properties, the Landowners, and the Tenants.⁴⁹

E. Decommissioning and Abandonment

37. The existing pipeline is not located on the properties subject to this Application. As such, no decommissioning or abandonment activities in respect of the existing pipeline apply to the Subject Properties.⁵⁰

F. Proposed Conditions

38. As set out above, Imperial does not oppose the Proposed Conditions of Board Staff.

III. CONCLUSION

39. The authority to expropriate requested in this Application is required to allow Imperial to construct and operate the Project to support continued safe, reliable, and environmentally responsible transportation of products between Imperial's Waterdown Station to Finch Terminal of the SPPL for decades to come. Imperial has made every effort to obtain the land rights required for commencement of construction via landowner negotiation prior to seeking authority to expropriation by way of this Application and has brought this Application in order to secure the interests in land required for the construction and operation of the Project, previously found by the Board to be in the public interest.
40. Such expropriation is in the public interest. The specific interests in the lands requested for expropriation are appropriate and Imperial has taken reasonable steps to minimize the impact of the proposed expropriations on the Subject Properties, the Landowners and the Tenants by requesting property interests that are no larger and no more extensive than

⁴⁹ Staff Submission at p. 6.

⁵⁰ Imperial IRR at OEB-4.

necessary and by continuing to engage in extensive consultation and negotiations with the Landowners and Tenants.

41. Imperial therefore respectfully requests that the Board make an order granting the authority to expropriate interests in land, the particulars of which are provided in Appendices D-2 and D-3 of the Application, subject to the Proposed Conditions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,
this 20th day of May, 2021

Patrick G. Welsh

OSLER, HOSKIN & HARCOURT LLP,
Counsel for Imperial Oil Limited