

RESS & EMAIL

March 5, 2026

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: Impala Canada Ltd. - Application for Leave to Expropriate (EB-2025-0286) – North Star Intervenor Submissions

We are legal counsel to North Star Forestry Ltd. (“North Star”), intervenor in the above-referenced proceeding. In accordance with Procedural Order No. 1, issued by the OEB on December 8, 2025, we are hereby filing North Star’s submissions in this proceeding.

A copy has been served on the applicant.

Yours truly,



Jonathan Myers

/JM

cc: Muhammad Yunus, OEB Case Manager
Michael Millar, OEB Counsel
Tim Hill, Impala Canada (Applicant)
Jeremy Barretto, Applicant’s Counsel
Chris Hunter, Torys LLP

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Impala Canada Ltd. under section 99(1)2 of the OEB Act for authority to expropriate land for the purpose of operating a transmission line to Impala Canada Ltd.’s mine.

**INTERVENOR ARGUMENT OF
NORTH STAR FORESTRY LTD.**

March 5, 2026

Torys LLP

Box 270, TD South Tower
79 Wellington St. W.
Toronto, ON M5K 1N2

Chris Kinnear Hunter

Tel: 416-865-7331
Email: ckhunter@torys.com

Jonathan Myers

Tel: 416-865-7532
Email: jmyers@torys.com

A. INTRODUCTION

1. Impala Canada Ltd. (“**Impala**”) – a subsidiary of a South African mining conglomerate¹ – seeks an order under section 99(1)2 of the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B)* (the “**Act**”) for approval to expropriate certain interests in two parcels of lands owned by North Star Forestry Ltd. (“**North Star**”) in the District of Thunder Bay, Ontario (the “**Application**”).

2. Impala requests authority to expropriate a permanent easement over North Star’s lands for the purposes of continuing to operate its existing, privately owned 115 kV transmission line (the “**Impala Line**”), which serves Impala’s Lac des Iles Mine (the “**Mine**”). In the alternative, Impala seeks “such other relief as the OEB may determine to be necessary and in the public interest to maintain the ongoing safe and reliable operation of the Independent Electricity System Operator-controlled transmission grid, including the Impala Line, and the ongoing safe and reliable operation of the LDI Mine”.² The area requested for expropriation is approximately 14 km in length and 30 m in width, for a total area of approximately 43 ha.³

3. North Star submits this Intervenor Argument in connection with the Application.

B. OVERVIEW

4. The Application should be dismissed. In substance, Impala seeks to use the OEB to circumvent contractual obligations it would prefer not to be bound by. The OEB should not permit itself to be used this way or dragged into what is, in reality, a private contractual dispute.

5. First, Impala lacks standing and the OEB lacks jurisdiction to grant the order sought. Section 99 only permits applications for authority to expropriate from applicants who either (i) have obtained leave to construct under Part VI of the *Act* or a predecessor thereof, or (ii) intend

¹ North Star Intervenor Evidence, para 6.

² Application, para 6.

³ See North Star response to Impala-1(a), and Impala Argument-in-Chief (AIC), para 84.

to “construct, expand or reinforce” an electricity transmission line and are exempt from the requirement to obtain leave to construct.⁴ Impala fulfills neither of these conditions. It concedes that it does not have leave to construct the transmission line under Part VI of the Act,⁵ and it has not demonstrated that leave to construct the transmission line was obtained under a predecessor of Part VI. Nor does it have any intention of constructing, expanding or reinforcing any line or making an interconnection

6. Second, the OEB does not have the inherent jurisdiction required to grant Impala’s alternative request for relief. The OEB’s jurisdiction is derived from its enacting legislation. The *Act* does not provide a general power to grant orders simply because Impala believes it is “necessary and in the public interest”. The only legislative basis Impala advances to support its alternative request is a suggestion that section 19(6) of the *Act* provides the OEB with authority “to review and make the decision to resolve this dispute”.⁶ But section 19(6) does not provide the OEB with any independent or freestanding jurisdiction or dispute resolution authority – it only gives the OEB the necessary authority to deal definitively with all reasonably associated aspects of applications brought under the authority of specific sections of the *Act* dealing with specific subject matters.⁷

7. More generally, nothing in the *Act* gives the OEB jurisdiction to resolve commercial disputes between private parties (here, regarding the terms for renewal of an expired easement for an existing, privately owned transmission line). This is especially true of the Impala Line, which is not used to serve any other end users. The proper forum to resolve contractual disputes between sophisticated commercial parties is the courts.

8. Third, even if Impala had standing and the OEB had jurisdiction (which is respectfully denied), the proposed expropriation is not in the “public” interest. Rather, the application is a

⁴ OEB Act, s. 99. Impala brings its application specifically based on (ii) (see Application, para 5)

⁵ Impala response to 1-North Star1(h).

⁶ Application, para 29.

⁷ OEB, Decision with Reasons re *Goldcorp*, EB-2011-0361/EB-2011-0376.

thinly-veiled attempt to advance Impala’s self-interest. The transmission line is a privately owned, unlicensed line connection facility that serves only one customer at one site (Impala at the Mine site). The transmission line is used only to support commercial palladium production at the Mine, and to enable Impala to meet its regulatory requirements with respect to environmental protection and closure of the Mine. Impala has advanced no evidence of any “public” interest and, indeed, will not even commit to the OEB to operate the Mine beyond 2027. These are Impala’s private commercial interests at stake. They should not be confused with a broader, “public” interest.

9. Indeed, the application is contrary to the public interest in holding parties to their contractual bargains. By agreeing to a limited term easement at the time it was entered into, the owner of the transmission line knowingly assumed the risk that if they (or their successors) ultimately wanted to use the transmission line for a period longer than the term of the easement, that they would have to negotiate a renewal or extension of the easement with the relevant landowner, failing which they would need to remove their facilities from the easement lands. Impala acquired the Mine and the transmission line on that basis. The *Act* should not be interpreted in a manner that circumvents and undermines the parties’ bargain.

10. Fourth, and in the alternative, even if Impala has standing, the OEB has jurisdiction, and granting authority to expropriate is in the public interest (which is denied), Impala has not shown that a *permanent* easement represents the minimum interest necessary for the expropriation. The OEB explicitly requires expropriation applicants to demonstrate that the specific interests in the lands requested for expropriation are appropriate and that reasonable steps have been taken to minimize the impact of the proposed expropriation on the subject properties and landowners.⁸ While Impala is seeking to expropriate an easement with a footprint equal to the footprint under

⁸ OEB, *Filing Requirements for Electricity Transmission Applications*, Chapter 4, December 16, 2025 (the “Filing Requirements”), Section 4.5.

the expired easement, Impala is inappropriately seeking to maximize the extent of its proposed taking temporally.

11. In this regard, it is important to recognize that Impala does not own or have permanent rights to use the Mine site or the remainder of the lands on which the Impala Line is situated. Rather, its right to use the Mine site is subject to multiple temporary mining leases from the Provincial Crown. Similarly, Impala's rights to use Provincial Crown lands for the portions of the Impala Line that extend beyond the North Star parcels are subject to temporary land use permits from the Province.⁹ Furthermore, Impala has announced that it plans to cease commercial operation of the Mine in summer 2027, and its closure plans call for an active close out phase of two years, after which electricity will no longer be required at the Mine site. A permanent easement would therefore be grossly disproportionate to Impala's needs, and an excessive intrusion on North Star's property rights. Rather, the request for a permanent easement appears to be an attempt by Impala to maximize its commercial position in a potential sale, at North Star's cost.

12. If the OEB were to determine that it has jurisdiction to grant expropriating authority and that doing so would be in the public interest, there is no demonstrated need for a permanent easement. A temporary easement accommodating the planned commercial operation of the Mine and its active close-out period would be more appropriate. Based on Impala's public statements and documents, this could be accomplished through a temporary easement extending no later than the end of 2029.

Finally, if the OEB is inclined to grant expropriation authority, it must attach appropriate conditions to any such authority to ensure that North Star's interests are protected. In that respect, the conditions agreed to between Impala's predecessor and North Star's predecessor, as set out in their letter agreement dated February 16, 1996 (the "**1996 Letter Agreement**"), and which the parties themselves had complied with at all times before the easement expired,

⁹ North Star Intervenor Evidence, para 21.

represent the minimal conditions of approval that should be imposed. These include obligations for Impala as the grantee to operate the line in accordance with all applicable laws, to maintain liability insurance, and to remove the line structures and restore the land to its natural forested state upon ceasing to use the Impala Line.

C. BACKGROUND

1. The Regulatory Framework

(a) Section 99 of the Act

13. Section 99 of the OEB Act establishes the OEB’s jurisdiction over applications for authority to expropriate land for electricity transmission works. It states:

99 (1) The following persons may apply to the Board for authority to expropriate land for a work:

1. Any person who has leave under this Part or a predecessor of this Part.
2. Any person who intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection and who is exempted under this Act from the requirement to obtain leave.

...

(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.¹⁰

14. The first step in considering an application under section 99 is for the OEB to determine whether an applicant is eligible to apply for authority to expropriate. Only if the applicant satisfies the eligibility requirements does the OEB move to the next stage of the analysis and consider whether the proposed expropriation is in the public interest.

15. An applicant can be eligible under section 99 in only three circumstances: (i) if it obtained leave to construct under Part VI of the *Act*; (ii) if it is exempt from the requirement for leave to construct in respect of a planned transmission line or interconnection; or (iii) if it

¹⁰ Act, s. 99.

obtained leave to construct under a predecessor to Part VI of the *Act*. As discussed further beginning at paragraph 40, Impala meets none of these prerequisites.

(b) The Public Interest Test

16. If (and only if) an applicant has standing under section 99, the OEB will consider whether expropriation is in the “public interest”.¹¹

17. As the OEB’s Filing Requirements note, the question under section 99 is whether the specific expropriation requested is in the public interest, not whether the underlying project itself is in the public interest.¹²

18. In determining whether a proposed expropriation is in the public interest, the OEB has considered:

- a. the objectives of the *Act*;
- b. the broad public interest;
- c. the interests of parties to the proceeding;
- d. whether the specific interests in lands requested for expropriation are appropriate;
- e. whether reasonable steps have been taken to minimize the impact of the taking on the subject properties; and
- f. if expropriation is ordered, what conditions should be attached to the order.¹³

¹¹ Act, s. 99.

¹² Filing Requirements, section 4.5.1.

¹³ Filing Requirements, section 4.5.1.

(c) Section 19(6) of the Act

19. Section 19(6) of the *Act* provides that the OEB has “exclusive jurisdiction in all cases and in respect of all matters *in which jurisdiction is conferred on it by this or any other Act*” (emphasis added).¹⁴

20. Section 19(6) does not create an inherent, freestanding jurisdiction. Rather, as the OEB has previously noted, 19 is only intended to ensure that the OEB has the necessary authority to deal definitively with all reasonably associated aspects of applications before it brought under the authority of specific sections of the *Act* and dealing with specific subject matters. It does not create or confer any jurisdiction that was not otherwise delegated by the legislature under the *Act*.¹⁵

2. The Transmission Line

21. The Impala Line is a privately owned, unlicensed 115 kV transmission line that was constructed in approximately 1996 to serve the Mine. The line originates from the Impala Junction Station (which connects to Hydro One’s transmission system near OPG’s Silver Falls generating station) and runs 65 km northwest to the Mine.¹⁶ The Mine is located approximately 130 kilometres by road northwest of Thunder Bay.¹⁷

22. The Impala Line is a line connection facility that conveys electricity solely from the provincial transmission grid to the Mine.¹⁸ Impala is the sole user of the electricity conveyed by the transmission line. Impala has no plans to extend, expand, or reinforce the transmission line.¹⁹

¹⁴ OEB Act, section 19(6).

¹⁵ OEB, Decision with Reasons, Goldcorp, January 23, 2012, EB-2011-0361/EB-2011-0376, p. 8.

¹⁶ Application, para 7.

¹⁷ Application, para 1.

¹⁸ North Star Intervenor Evidence, para 14. See also the OEB’s Transmission System Code, which defines “line connection” as meaning a radial line that does not, under normal operating conditions, connect network stations and whose sole purpose is to serve one or more persons.

¹⁹ Impala response to 1-North Star-1(d).

The Mine also has three large diesel power generators on site to provide power to essential services in the event of power outages.²⁰

23. The Impala Line is not part of a licensed utility transmission system. It does not serve the public and is not authorized for use in providing transmission service to other users. Impala is not licensed to own or operate transmission facilities serving others.

3. *The Easement*

(a) **The 1996 Letter Agreement**

24. On February 16, 1996, Abitibi-Price Inc. (as grantor and landowner) entered into a letter agreement with North American Palladium Ltd. (as grantee and predecessor to Impala) setting out the terms and conditions for the grant of an easement across Abitibi-Price's private lands to construct and maintain the 115 kV transmission line for the Mine (the "**1996 Letter Agreement**").²¹

25. The 1996 Letter Agreement²² explicitly provides that the easement was granted "for an easement term of 25 years such term subject to renewal upon the mutual consent of both parties" (section i). The agreement further provides (among other things) that:

- (a) The grantee's access to the transmission line and roads on the Easement Lands exists "*at the grantor's discretion*" (emphasis added);
- (b) The grantee is obliged to restore the Easement Lands to a natural forested state once the transmission line ceases to be used for the purpose of electrical transmission by the grantee, its assigns, successors, or Ontario Hydro;
- (c) The grantee must remove all non-wood transmission line structures, including lines, transformers, hardware, and structures, and render any land alterations to a natural state, at the discretion of the grantor;

²⁰ North Star Intervenor Evidence, para 14.

²¹ North Star Intervenor Evidence, para 11.

²² See North Star Intervenor Evidence, Exhibit A, for a copy of the 1996 Letter Agreement.

- (d) The grantee must at all times maintain comprehensive general liability insurance with limits not less than \$5,000,000;
- (e) If the grantee changes the use of the transmission line from its original intent, the grantor has the right to cancel or renegotiate the terms and conditions of the easement, subject to renewal of the term as specified in the easement; and
- (f) The grantee must comply with all applicable laws, including the *Occupational Health and Safety Act* and all other statutes, by-laws, regulations, orders, and directions of government and regulatory authorities.

(b) The 1999 Transfers of Easement

26. In 1999, formal Transfers of Easement were registered on title to the North Star lands (then owned by Abitibi-Consolidated Inc., the successor to Abitibi-Price Inc. and predecessor to North Star). The registered transfers state that the grantor “transfers and conveys in perpetuity to the Transferees, their successors and assigns, *for a term of 25 years such term subject to renewal upon the mutual consent of both parties*, the rights and easement...” (emphasis added).²³

27. As explained by North Star in response to Staff-1(a), it is an established principle of contractual interpretation that contractual provisions should be interpreted harmoniously in a manner that reconciles and gives effect to all of their terms. There are two potential interpretations that give effect to this principle here. First, the contract created a framework for a potentially perpetual agreement, but required periodic mutual consent of the two parties to continue beyond each 25-year term. Second, the limited provisions contained in the registered transfers and grant of easements were intended to perform the basic function of registering notice on title of the grantee’s right to the easement so that third parties would be aware of the easement, and at the same time this right and the terms and conditions associated with it are fully set out in the detailed 1996 Letter Agreement, which provides the relevant covenants and obligations in connection with the use of the easement, including that the term will be for “25 years . . . subject to renewal upon the mutual consent of both parties”.

²³ Application, Appendix 5, p. 2, s. 2.

28. In either case, Impala's right to use the land cannot continue beyond a term of 25 years without Impala obtaining North Star's consent. This interpretation also aligns with the reality that a sophisticated grantor like Abitibi-Consolidated Inc. would not have agreed to the easement in the absence of the covenants and obligations as set out in the 1996 Letter Agreement.

(c) Expiry of the Easements

29. In December 2005, North Star acquired the Easement Lands as part of its purchase of a 480,000-acre timberland property from Abitibi-Consolidated Inc.²⁴ North Star thereby became the successor owner all of Abitibi-Consolidated Inc's rights in connection with the Easement.

30. In December 2019, through an amalgamation of North American Palladium Ltd., Lac Des Iles Mines Ltd. and a numbered company, Impala thereby became the successor owner of the Impala Line and the associated easement rights.²⁵

31. The initial 25-year term under the Transfers of Easement expired on February 18, 2024. The parties have never mutually consented to renewal.²⁶ As such, the Impala has been occupying North Star's lands without legal authority for more than two years.

(d) Failure to Negotiate Renewal

32. Despite the expiry of the easement in February 2024, North Star has never interfered with Impala's access to the easement lands or use of the transmission line. Instead, North Star entered into good faith, commercial negotiations with Impala to negotiate an extension of the easement in accordance with the terms of the 1996 Letter Agreement on the assumption and understanding that Impala would respect its contractual obligations attempted in good faith.²⁷

²⁴ North Star Intervenor Evidence, para 8.

²⁵ Impala Response to OEB Staff-1(a).

²⁶ Impala Response to North Star-2 (a) and (b).

²⁷ North Star Intervenor Evidence, para 17; North Star response to Impala-6(d).

33. The parties have engaged in negotiations regarding the renewal of the easement since late 2024. To date, the negotiations have not resulted in an agreement. As North Star has previously confirmed in this proceeding, its position is that until there is mutual agreement on all terms, including but not limited to compensation, there is no final agreement on any terms.²⁸ Further, contrary to Impala’s characterization that compensation has been the “only issue outstanding” or “core disagreement” between the parties, the parties have differed on multiple substantive matters, including:

- a. Whether an extension should be temporary (as provided for in the 1996 Letter Agreement and in recognition of the announced closure of the Mine) or permanent;
- b. Depending on whether the extension is temporary or permanent, what the appropriate compensation should be; and
- c. Issues of decommissioning and restoration upon cessation of use.²⁹

34. In correspondence dated September 11, 2025, counsel for North Star wrote to Impala’s counsel noting the expiry of the easements and North Star’s willingness to negotiate a renewal, while expressing concern about Impala’s demand for a permanent easement in circumstances where the Mine was scheduled to close.³⁰

35. North Star proposed that, given the announced closure of the Mine, a short-term renewal of the easement until December 2029 would be appropriate, at a correspondingly reduced cost to Impala. This proposal was consistent with the terms of the original 1996 Letter Agreement, which contemplated a fixed term subject to periodic renewal.³¹

²⁸ North Star response to Impala-5(d).

²⁹ North Star Intervenor Evidence, para 19.

³⁰ North Star Intervenor Evidence, Tab C.

³¹ North Star Intervenor Evidence, Tab C.

36. Impala responded on September 18, 2025, advising of its intention to file an expropriation application with the OEB.³² Impala has never responded substantively to North Star’s latest offer and the parties have not engaged in any further substantive negotiations since North Star’s letter of September 11, 2025.³³ Impala also declined North Star’s offer to hold a meeting between counsel and their respective clients.

4. Mine Closure

37. The commercial context is critical to this proceeding. The Mine is ceasing commercial operations and closing. Impala’s parent company, Impala Platinum Holdings Limited (“**Implats**”), has repeatedly and publicly disclosed the limited remaining life of the Mine:

- a. The Implats Annual Integrated Report for 2023 reported the anticipated life of the Mine as five years as of June 30, 2023, and Implats took a write-down of approximately C\$800 million;
- b. The Implats Annual Integrated Report for 2024 reported the anticipated life of the Mine as three years as of June 30, 2024, while acknowledging deteriorating prices and limitations in tailings dam capacity;
- c. The Implats Annual Integrated Report for 2025 reported the anticipated life of the Mine as eleven months as of June 30, 2025, to the end of May 2026;
- d. In July 2025, Impala announced it would cease commercial production at the LDI Mine on May 31, 2026, including because of “plummeting palladium prices”; and
- e. In November 2025, Impala revised its announcement and stated it would extend operations until summer 2027.³⁴

38. Even Impala’s most optimistic current projection contemplates commercial production ceasing in summer 2027—approximately 18 months from the date of these submissions.³⁵ Following cessation of commercial production, Impala will be required to conduct certain

³² Impala response to 2-North Star-2(a).

³³ North Star response to OEB Staff-1(c).

³⁴ North Star Intervenor Evidence, paras 22-26, and Exhibit D.

³⁵ North Star Intervenor Evidence, para 24.

remediation works in accordance with its closure plan. Impala's closure plan asserts that an active close out phase would require two years following the cessation of commercial operations (i.e. from 2027 – 2029).³⁶

39. The official closure plan for the Mine, filed with the Ministry of Energy, Northern Development and Mines in December 2019, makes only one mention of the transmission line, stating that "The transmission line is under an active land use permit". The closure plan makes no reference to the easements or the closure requirements from the 1996 Letter Agreement.³⁷

D. SUBMISSIONS ON THE ISSUES

1. Issue 1: Does the OEB have jurisdiction under s. 99 to consider the application and grant the requested relief?

40. Impala lacks standing and the OEB lacks jurisdiction under s. 99 of the *Act* to consider Impala's Application. The Application should be denied on this basis.

41. Impala's proposed interpretation of s. 99 and the OEB's jurisdiction thereunder, as set out in part C(ii) of its submissions, is flawed and should be rejected.

(a) Impala Does Not Meet the Requirements Under Section 99(1) or (2)

42. Impala brought its Application specifically under section 99(1)2 of the *Act*.³⁸ Despite this, it appears to have pivoted in its submissions to instead seek authority to expropriate under either section 99(1)1 or 99(1)2.³⁹

43. Section 99(1)2 permits expropriation applications to be brought by "any person who intends to construct, expand or reinforce an electricity transmission line or an electricity

³⁶ North Star responses to OEB Staff-1(d).

³⁷ Preamble and North Star response to Impala-10.

³⁸ Application, para 5.

³⁹ Impala, AIC, para 4.

distribution line or make an interconnection and who is exempted under this *Act* from the requirement to obtain leave”.

44. Impala has adduced no evidence whatsoever, and makes no claim to have any intention to construct, expand or reinforce a transmission line.⁴⁰ Impala’s submissions ignore this completely.

45. Section 99(1)2 is clearly not available to Impala. The Impala Line is an existing line that was constructed and interconnected approximately 30 years ago. At most, Impala says that it will maintain the line,⁴¹ but there is no indication on the record from Impala (let alone evidence) of an intention to expand or reinforce the line (i.e. to increase line length or transmission capacity, or to upgrade or strengthen the line), or to make any new interconnection with the line. Rather, Impala seeks only to continue operating its existing transmission line.

46. Impala makes a convoluted and ill-conceived argument that normal maintenance work on the Impala Line meets the requirements of s. 99(1)2 of the *Act*.⁴² Not so. The language of the provision is clear. An applicant must intend to “construct”, “expand”, or “reinforce” a line, not engage in run-of-the-mill maintenance activities.

47. By extension, since there is no planned construction, expansion or reinforcement of a transmission line, or interconnection, there is no reason to consider any of the exemptions from the requirement for leave to construct under O. Reg. 161/99. Impala’s arguments about exemptions under s. 6.2(1) of O. Reg. 161/99 must therefore fail as well.⁴³

⁴⁰ Impala, AIC, para 28.

⁴¹ Impala response to North Star IR-1(d); Impala, AIC, para 4.

⁴² Impala, AIC, paras 49-54.

⁴³ Impala, AIC, paras 29-30.

48. Section 99(1)1 permits expropriation by “any person who has leave under (Part VI of the *Act*) or a predecessor of (Part VI of the *Act*)”. Impala admits that it does not have leave to construct under Part VI of the *Act*.⁴⁴

49. Impala’s arguments about leave under predecessors to Part VI of the *Act* are similarly scant. Impala’s submissions largely focus on the prior version of the *Act* (i.e. the *OEB Act, 1990*). In response to OEB staff’s question about approvals obtained for construction of the transmission line in 1996, Impala has only been able to point to certain land use permits, work permits and licenses to harvest Crown forest resources.⁴⁵

50. None of these are the equivalent of leave to construct. They are administrative permits that allow only temporary occupancy or other discrete activities on Crown lands. These instruments would not have authorized the need for or construction of the Impala Line pursuant to legislation.

51. The reference in s. 99(1)1 of the *Act* to “a predecessor of” Part VI of the *Act* refers to an earlier legislative scheme governing the approval of the need for and construction of an electricity transmission line. The *OEB Act, 1990* did not govern the need for or construction of electricity transmission lines. Its focus was natural gas.

52. Whereas Impala has limited its consideration of predecessor legislation primarily to an earlier version of the *Act* and makes only passing mention of other legislation, North Star considered this question more broadly in an effort to identify any Ontario legislation that pre-dates the *OEB Act, 1998* governed the approval of the need for and construction of electricity transmission lines.

⁴⁴ Impala response to North Star IR-1(h).

⁴⁵ Impala response to OEB Staff-1(e).

53. The primary (and perhaps only) predecessor to Part VI of the *Act* (relevant to the period of time at issue) consists of certain provisions of the *Power Corporation Act*, RSO 1990,⁴⁶ in particular section 28(2)(g), under which the Lieutenant Governor in Council (“**LGIC**”), on the recommendation of Ontario Hydro, could authorize Ontario Hydro to construct transmission lines and related facilities and acquire lands for these purposes. Notably, section 28(2)(g) related only to lines to be constructed by Ontario Hydro for purposes of its transmission system, which served all customers in Ontario. North Star has identified no equivalent provision that would have applied to a privately owned transmission line connection such as the one at issue here.

54. As such, section 99(1)1 of the *Act* must be interpreted to mean that the only circumstances where authorization to expropriate can be given to a person who has leave to construct under a predecessor to Part VI of the *Act* (at least in respect of a line constructed in or around 1996), is where that person is Ontario Hydro (or a successor thereto) and the transmission line at issue was the subject of an authorization from the LGIC under section 28(2)(g) of the *Power Corporations Act*, 1990.

55. The reference to a predecessor to Part VI does not assist Impala and should be understood as a transitional provision that would have allowed for expropriation applications by Hydro One or other successors of Ontario Hydro in respect of lines for which Ontario Hydro had already obtained LGIC authorization under section 28(2)(g) of the *Power Corporations Act* prior to the restructuring of Ontario Hydro and the Ontario electricity market.

56. Impala argues that denying its ability to seek authority to expropriate would be “absurd” and “inefficient”⁴⁷ because the OEB would have jurisdiction under section 99 if Impala relocated or rebuilt the Impala Line.⁴⁸

⁴⁶ See: [c P.18 Power Corporation Act, 1990](#)

⁴⁷ Impala, AIC, paras 56-59.

⁴⁸ Impala, AIC, paras 58.

57. Impala's argument is without merit. With respect to expropriation, the *Act* does not treat existing transmission lines the same way as a planned but as-yet unbuilt lines. There is no ability with an existing line to modify the route or design or other aspects to avoid or mitigate impacts.

58. Moreover, section 99 is intended to be available only in respect of planned projects, and not to cure deficient land rights in circumstances where existing infrastructure is to be operated in the ordinary course of business. This is apparent from the fact that section 99 is only available to parties who have obtained leave to construct their project or who are exempt from the requirement to obtain leave to construct their project. Once the project is constructed or intended, section 99 is no longer available. If the owner of the line wants to use the line for a period longer than they secured land rights for, they will need to bear the financial consequences of their original choice in securing land rights of a lesser duration. Section 99 is not and should not be available to help the owner of the transmission line gain leverage in their efforts to secure such additional land rights.

59. Impala is therefore not eligible under section 99 of the *OEB Act, 1998* to seek authority to expropriate lands required for the continued operation of its privately owned transmission line connection facilities. It has no plans to "construct, expand or reinforce" the Impala Line. It does not have leave to construct under Part VI of the *OEB Act, 1998*, and it is not a successor of Ontario Hydro that was subject to a requirement equivalent to leave to construct under a predecessor of Part VI, being section 28(2)(g) of the *Power Corporations Act, 1990*.

60. The Application is outside the scope of section 99. It should be dismissed.

(b) *Enbridge* Does Not Assist Impala

61. Impala argues that it has standing because the OEB previously authorized Enbridge to expropriate a perpetual easement to allow for the continued operation of a natural gas pipeline that had been constructed in the 1970s (the “*Enbridge*” decision).⁴⁹

62. The OEB is not bound by the *Enbridge* decision and, in any event, it does not assist Impala here.

63. Impala mischaracterizes *Enbridge* as standing for the proposition that the OEB can grant expropriation authority for purposes of “restoring historical easements”.⁵⁰ On that basis, Impala wrongly asserts that the OEB can and should ignore the question of whether it has jurisdiction to grant expropriating authority over existing infrastructure under section 99 and jump directly to undertaking a public interest analysis.⁵¹

64. As a preliminary matter, Impala’s reliance on *Enbridge* is an implicit acknowledgement that it cannot meet the prerequisites imposed by section 99 of the *Act*.

65. In any event, *Enbridge* does not assist Impala on the facts of this case. In *Enbridge*, the applicant was a natural gas distributor that held a franchise agreement with the relevant municipality.⁵² After a landowner tried to have a court declare that Enbridge was trespassing on that landowner’s property with its pipelines that had been constructed in the 1970s, Enbridge brought an application requesting that the OEB recognize its existing legal rights and interests in the relevant lands pursuant to the *Public Utilities Act* and, to ensure that those rights were recorded on title. Enbridge sought to have the OEB authorize the expropriation of easements for the relevant lands.⁵³ Under section 58 of the *Public Utilities Act*, gas distributors who have a

⁴⁹ EB-2011-0391, OEB Decision and Order, June 14, 2012.

⁵⁰ Application, para 35.

⁵¹ Impala AIC, paras 62-63.

⁵² *Enbridge*, EB-2011-0391, Application, Exhibit B-1-1, paras 2-3.

⁵³ *Enbridge*, EB-2011-0391, Application, Exhibit B-1-1, paras 16-17.

franchise agreement with a municipality, such as Enbridge, are permitted to expropriate lands in the municipality without the need for leave to construct.⁵⁴

66. *Enbridge*, like this case, involved existing/historical infrastructure. Beyond that, Impala’s analogy fails. Unlike this case, there was no issue of eligibility to apply for authority to expropriate in *Enbridge*. Moreover, the Enbridge pipeline at issue in that proceeding served approximately 7,000 customers and was part of the utility’s gas distribution system serving the public.⁵⁵ By contrast, the Impala Line is a privately owned, non-utility line serving a single private customer, being the owner of the transmission line.

67. Furthermore, the issue in *Enbridge* arose because of a temporary taking of utility land rights by federal authorities for federal works, which land rights were not transferred back upon completion of the federal works.⁵⁶ Here, conversely, Impala’s predecessor only ever secured a 25-year easement for the transmission line, and Impala would prefer not to have to negotiate a renewal or extension of that easement or make alternative electricity supply arrangements.

68. Unlike in *Enbridge*, Impala is not seeking to “restore” historical land rights or have the OEB assist it in recognizing existing rights on title. Notably, Impala has *never* had land rights for a period greater than 25 years. It is for precisely that reason that Impala is seeking to have the OEB grant expropriation so that it can circumvent its contractual bargain. That is neither analogous to *Enbridge* nor an appropriate use of the OEB’s expropriating authority.

(c) Section 19(6) Does Not Create Jurisdiction Where None Otherwise Exists

69. Impala makes an alternative request for “such other relief as the OEB may determine is necessary and in the public interest to maintain the ongoing operation of the Impala transmission

⁵⁴ Enbridge, EB-2011-0391, Application, Exhibit B-1-1, para 32.

⁵⁵ Enbridge, EB-2011-0391, Application, Exhibit B-1-1, para 6.

⁵⁶ Enbridge, EB-2011-0391, Decision, p. 3.

line and the ongoing operation of the LDI Mine”.⁵⁷ Although not clearly specified, this alternative request appears to be based on section 19(6) of the *Act*.

70. Section 19(6) provides that “The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act”.⁵⁸

71. Section 19(6) does not provide the OEB with independent or freestanding jurisdiction or dispute resolution authority. Rather, it only ensures that the OEB has the necessary authority to deal definitively with all reasonably associated aspects of applications brought under the authority of specific sections of the *Act* dealing with specific subject matters.⁵⁹ Put otherwise, it does not create or confer new jurisdiction where none otherwise exists in the legislation.

72. Were it otherwise, there would be no need for other provisions of the *Act* to set out when the OEB has jurisdiction to grant particular relief, including authority to expropriate. The OEB must give meaning to the legislature’s decision only to grant it certain jurisdiction.

73. If the OEB determines that Impala is not eligible to seek expropriation authority under section 99, section 19(6) cannot be used to bootstrap jurisdiction that does not exist. The Board should reject any invitation to expand its jurisdiction beyond what is clearly conferred by the statute, or by necessary implication.

2. *Issue 2: Have the 1999 Impala easements been extinguished?*

74. Whether or not the OEB determines it has jurisdiction to consider Impala’s request for authority to expropriate, it is important to understand the status of the easement and its terms.

75. The easement has expired and the terms of the expired easement are embodied by the applicable transfers of easement together with the 1996 Letter Agreement, discussed below.

⁵⁷ Application, para 6.

⁵⁸ *Act* s. 19(6).

⁵⁹ OEB, Decision with Reasons re Goldcorp, EB-2011-0361/EB-2011-0376.

(a) Extinguishment

76. As explained by North Star in response to OEB Staff-1(a) and (b), the term of the easement (which applies to both parcels) has expired. Only the registered transfer of grant of easement remains referenced on title to the North Star lands (referenced in the legal description (thumbnail) of PIN 62329-0006 as F92791 and PIN 62326-0001 as F92792).

(b) Easement Term

77. Registered title to the Easement Lands⁶⁰ is subject to, among other things, two transfers of easement (collectively, the **“Transfers of Easement”**), being instrument nos. F92791 and F92792.⁶¹ Copies of these instruments can be found in the first 14 pages of Appendix 5 of Impala’s Application.

78. The Transfers of Easement are in a form that enables the creation and registration on title of an easement and contain only limited terms and conditions on the parties thereto. The terms and conditions with respect to the grant and use of the Easement Lands was first established on February 16, 1996 pursuant to an agreement between Abitibi-Price Inc. (as transferor) and North American Palladium Limited (as transferee) (i.e. the 1996 Letter Agreement). A copy of the 1996 Letter Agreement setting out the terms and conditions with respect to the grant and use of the Easement Lands is contained immediately following the Transfers of Easement in Appendix 5 of Impala’s Application.

79. The term of the easement is described in para 2 of the Transfers of Easement as being “in perpetuity . . . for a term of 25 years such term subject to renewal upon the mutual consent of both parties, . . .” The term of the easement is clarified in para (i) of the Letter Agreement as being for “25 years such term subject to renewal upon the mutual consent of both parties”, with no reference to perpetuity.

⁶⁰ As defined in para 7 of North Star’s Intervenor Evidence.

⁶¹ As further described in para 9 of North Star’s Intervenor Evidence.

80. It is an established principle of contractual interpretation that contractual provisions should be interpreted harmoniously in a manner that reconciles and gives effect to all of its terms.⁶² There are two potential interpretations here that give effect to that principle. First, the contract created a framework for a perpetual agreement, but required periodic *mutual* consent of the two parties to continue. Second, the limited provisions contained in the registered transfers and grant of easements were intended to perform the basic function of registering notice on title of the grantee's right to the easement so that third parties would be aware of the grantee's easement. At the same time, this right and the terms and conditions associated with it are fully set out in the detailed 1996 Letter Agreement, which provides for a series of covenants and obligations by the grantee in connection with the use of the easements, including that the term of the easement will be for "25 years...subject to renewal upon the mutual consent of both parties".

81. In either case, Impala's right to use the land cannot continue beyond a term of 25 years without Impala obtaining North Star's consent. This interpretation also aligns with the reality that a sophisticated grantor like Abitibi-Consolidated Inc. would not have agreed to the easement in the absence of the covenants and obligations as set out in the 1996 Letter Agreement, which include, among other things, that:

- The Easement was granted for the purposes of constructing and maintaining a 115kV transmission line for the Lac Des Iles Mine on 41.7 hectares (103 acres) (section i);
- The grantee's (i.e. Impala's) access to the transmission line and roads on the Easement Lands exist at the grantor's (i.e. North Star's) discretion (section vii);
- Measures must be taken by the grantee to protect all lakes, ponds, rivers and streams from contamination, erosion or deterioration of any kind (section viii);

⁶² See, for example, *Argo Mezzanine Financing No 1 Ltd v Plaza 88 Development Ltd.*, 2025 BCCA 73 at para 75.

- The grantee will not interfere with, obstruct or take priority over any operations of the grantor or its contractors or authorized commercial operators (section xi);
- The grantee is obliged to restore the Easement Lands to a natural forested state once the transmission line ceases to be used for the purpose of electrical transmission by the grantee, its assigns, successors or Ontario Hydro, and remove all non-wood transmission line structures and render any land alterations to a natural state at the discretion of the grantor (section xii);
- In the event that the use of the transmission line should change from its original intent, the grantor reserves the right to cancel or renegotiate the terms and conditions of easement, subject to renewal of the term of the easement being as specified in clause i (section xiii);
- The grantee shall arrange and maintain at its expense throughout the term, comprehensive general liability insurance, with limits for any one occurrence or claim not less than \$5,000,000 and as further specified (section xiv);
- The grantee agrees to comply with all applicable environmental laws concerning environmental protection, pollution, noise control and abatement, as well as not to bring on site any hazardous materials without the grantor's prior consent, to remove and dispose of materials off-site, and to report all spills to the grantor and in accordance with applicable laws (section xv); and
- The grantee shall assume all liability and obligation for any loss, damage or injury relating to the easement and transmission line, and shall indemnify and save grantor and its employees and agents harmless from all claims, etc. (sections xvi and xix).

82. For these reasons, Impala's right to use North Star's lands ceased with the expiry of the first 25 year term (i.e. to February 18, 2024), subject to Impala obtaining North Star's consent to

renew or extend. To date, no such consent has been granted because the parties have not reached agreement on the terms for a new, extended or renewed easement.

83. By offering compensation to North Star during negotiations of a renewal, extension or new easement, and by bringing this application seeking authority to expropriate a new permanent easement, Impala has effectively conceded that the original easement is no longer in effect and has not been for the past two years.

3. *Issue 3: Is the proposed expropriation in the public interest?*

84. The proposed expropriation would only serve Impala's private commercial interest, not the public interest. It would restrict and detrimentally affect North Star's property rights and entail an abuse of the OEB's function and powers under s. 99 of the *Act*. The OEB should not involve itself in what is fundamentally a contractual dispute between two sophisticated commercial parties.

(a) The Public Interest in the Context of Expropriation

85. If (and only if) the OEB has jurisdiction over an application for leave to expropriate, the main question is whether the expropriation requested is in the public interest. The OEB's Filing Requirements clarify that the question is whether the specific expropriation requested is in the public interest, not whether the underlying project (here, anything to do with the Mine) is in the public interest.⁶³

86. In assessing whether a specific expropriation request is in the public interest, the OEB has previously considered aspects such as the objectives of the *Act*, the broad public interest, and the interests of parties to the proceeding, including with respect to considerations such as whether the specific interest in lands requested for expropriation are appropriate and what conditions should be attached to any order. North Star discusses the broad public interest and the interests of the landowner below. Whether the specific interest in lands requested for

⁶³ OEB, Filing Requirements, section 4.5.1.

expropriation are appropriate and what conditions should be attached to any order are considered under Issues 4 and 5.

(b) The Impala Line Does Not Serve a Broad Public Interest

87. Expropriation of an easement for the Impala Line would only serve Impala's private commercial interests. The Impala Line is a privately owned, unlicensed transmission line that serves only Impala in respect of its Mine site. It does not serve the public and is not part of the provincial transmission grid. It does not provide and is not allowed to be used to provide transmission services to any other users.

88. Impala argues that the transmission line is needed to support the Mine's environmental and safety management systems, and that the mine provides employment and contributes to the local economy.⁶⁴ These self-serving arguments are legally and logically unpersuasive.

89. First, as a matter of law, these are not relevant considerations for the OEB in assessing whether the proposed expropriation is in the public interest. As the OEB has clarified, the question is whether the specific expropriation requested is in the public interest, not whether a project it is associated with is.

90. Second, and in any event, Impala's characterization of the public interest ignores the facts:

- a. Impala has not documented any instance where it has requested (or obtained) perpetual rights from the Province in relation to the operation of the Mine (on Crown land) or those portions of the Impala Line crossing Crown land to support the Mine's environmental and safety management systems;

⁶⁴ Application, para 39.

- b. Consistent with its contractual rights and obligations, Impala can negotiate a renewal of the easement on commercial terms without an expropriation;
- c. Despite several opportunities, including in this case, Impala will not commit to operating the Mine beyond 2027. As against that fact, arguments about benefits for employment and the local economy if the expropriation is granted are neither credible nor sincere;
- d. Impala’s argument assumes that continued operation of the Mine is positive from an economic and social perspective. Public reporting indicates that local Indigenous communities around the Mine would disagree. Despite the Mine being located within Gull Bay First Nation, the Nation’s chief has publicly stated that his community was “ambivalent” about the Mine, that the Mine has been a source of tension, that Impala employs very few members of Gull Bay First Nation, and that there have been issues relating to the Mine’s tailing pond and repeated accusations by Gull Bay First Nation of environmental damage.⁶⁵
- e. Of particular note, the chief explained that one reason for tension between Gull Bay First Nation and Impala is that they “*were involved in negotiations with Impala to look at a community benefit agreement and [Impala] basically shut the negotiations down, [saying] that they were no longer interested in developing a relationship with the Gull Bay First Nation.*”⁶⁶ The parallels to Impala’s approach to negotiations with North Star to renew the easement are self-evident.

91. Impala refers to the OEB’s 2006 decision on an expropriation application by Hydro One in respect of a transmission line that Hydro One was planning to construct to serve a Toyota manufacturing facility (the “*Toyota*” decision). In that case, a new line was to be constructed by

⁶⁵ Hudnut Affidavit, App. E.

⁶⁶ Hudnut Affidavit, App E.

the utility to connect a manufacturing facility that was being constructed by Toyota to provide long-term economic benefits to the region.

92. In concluding that the expropriation was in the public interest, the OEB noted that the line would “contribute to the expansion and diversification of the already established automotive manufacturing base in the Woodstock area, and will provide direct and indirect employment and economic benefits to the City of Woodstock and the Province of Ontario.”⁶⁷

93. The circumstances are markedly different here. Unlike the forward-looking, long-term benefits in Toyota, Impala offers nothing beyond 2027. It was incumbent on Impala if it was to persuade the Board that expropriation is in the public interest to show that expropriation would facilitate meaningful, long-term (or, at least, medium-term) benefits to the local economy. There is no such evidence. Instead, Impala commits only to operate the Mine until next year. This shows that the primary motivation underlying the Application is Impala’s private, commercial, self-interest, not a broad, public interest.

(c) North Star’s Rights Should Not Be So Lightly Set Aside

94. The OEB must consider the interests of affected landowner.⁶⁸ North Star is a forestry company that acquired the Easement Lands in 2005 as part of a significant timberland property. North Star was cognizant of the contractual arrangements contained in the 1996 Letter Agreement and of the Transfers of Easement registered on title. The continued encumbrance of North Star’s lands by an expired easement creates a cloud on title. The 1996 Letter Agreement included a specific expectation that the parties would come to a commercial agreement regarding any renewal or extension of the easement beyond the initial 25-year term, and it included specific provisions to protect the landowner’s rights and interests, including requirements for the grantee

⁶⁷ *Toyota* at p 13.

⁶⁸ *Toyota* and several others were considered by the OEB in EB-2013-0268, where the Board concluded that its cases give a clear understanding that the Board’s approach to the question of scoping the section 99 case allows the interests of landowners with respect to their individual parcels to be considered in comparison to the interests of the Applicant and the broader interests of Ontario.

to restore the lands to a natural forested state upon cessation of use, to remove all transmission line structures, and to maintain liability insurance. Since February 2024, Impala has been operating the Impala Line across North Star's property without a valid easement (or other legal arrangement) and without any compensation to North Star.

95. By agreeing to a limited term easement at the time it was entered into, the owner of the transmission line knowingly assumed the risk that if they (or their successors) ultimately wanted to use the transmission line for a period longer than the term of the easement, that they would need to negotiate a renewal or extension of the easement with the relevant landowner, failing which they would need to remove their facilities from the easement lands. Impala acquired the Mine and the transmission line on that basis. North Star also acquired the relevant parcels on the same basis. As such, the real broad public interest consideration in this proceeding is that where a private land owner has granted a temporary easement to a third party to allow the third party to run a private transmission line across their property for a limited period, when the term of that temporary easement expires the third party (including its successor) should not be permitted to leverage section 99 of the *Act* to gain the upper hand in negotiating a renewal or extension of the easement or to force the land owner to accept the continued presence of the third party transmission line on their property – whether permanently or temporarily. However, this is precisely what Impala is seeking to do.

4. *Issue 4: Has Impala requested expropriation of the minimum legal interest that it requires for the lands?*

96. The OEB's Filing Requirements explicitly require applicants to demonstrate that the specific interests in lands requested for expropriation are appropriate.⁶⁹ This is a core consideration in expropriation applications before the OEB. Where the requested expropriation is excessive relative to a demonstrated need, the request may be denied or authority granted over a lesser interest that is deemed to be proportionate to the need in the circumstances at issue.

⁶⁹ OEB, Filing Requirements, s. 4.5.2.

Here, Impala's request for a perpetual easement is excessive and should be denied.

Alternatively, if the OEB is inclined to grant expropriating authority, it should be limited to a temporary easement, as follows.

(a) The 'Minimum Interest' Principle

97. Proportionality is at the heart of the OEB's authority. Expropriation significantly interferes with private property rights and should not extend beyond what is required to fulfill the public interest purpose being served. The OEB has recognized this principle in its Filing Requirements, which require applicants to demonstrate that the specific interests requested are appropriate and that reasonable steps have been taken to minimize the impact of the taking on the subject properties.⁷⁰ In considering whether a proposed taking reflects the minimal interest required, the OEB may consider the scope of the proposed taking from various dimensions: the legal nature of the interest (fee simple, lease, easement, etc.), physical size (length, width), and temporal considerations (perpetual, temporary/length of term).

(b) A Permanent Easement Exceeds Impala's Demonstrated Needs

98. Impala seeks to inappropriately maximize the extent of its proposed taking temporarily by requesting authority to expropriate a perpetual/permanent easement. At its highest, Impala's evidence establishes a temporary and relatively short-term commercial imperative for its business, not a compelling need for a permanent expropriation driven by public interest.

99. Commercial production at the Mine is scheduled to cease by summer 2027.⁷¹ Following the cessation of commercial production, an active closure period of approximately two years' duration is expected.⁷² Impala's closure plans specify that electricity supply to the Mine site will

⁷⁰ OEB, Filing Requirements, ss. 4.5.1 and 4.5.2.

⁷¹ North Star Intervenor Evidence, para 24.

⁷² North Star responses to Impala IR 10(a), Attachment A, North American Palladium Ltd., Lac des Iles Mine, 2019 Addendum to the 2018 Mine Closure Plan Amendment, December 2019, Section 10.2.4, p. 10-15 (pdf 181 of 241).

not be required after the two-year active closure period because, by the end of the second year, all personnel and equipment needing continuous on-site power will have been removed.⁷³

100. Moreover, Impala does not own or have permanent rights to use the Mine site or the remainder of the lands on which the Impala Line is situated. Rather, its right to use the Mine site is subject to multiple temporary mining leases from the Provincial Crown. Similarly, Impala's rights to use Provincial Crown lands for the portions of the Impala Line that extend beyond the North Star parcels are subject to temporary land use permits from the Province.⁷⁴ It would not be appropriate to grant authority to expropriate a perpetual easement for the portion of the Impala Line that traverses the North Star parcels given that North Star does not have perpetual rights over any other portion of the transmission line right-of-way, or even for its own Mine site.

(c) The Appropriate Interest, if Any, is a Temporary Easement

101. A permanent easement would therefore be grossly disproportionate to Impala's needs, and an excessive intrusion on North Star's private property rights. As described in response to OEB Staff-1(d), if the OEB were to determine that it has jurisdiction to grant expropriating authority and that doing so would be in the public interest, a temporary easement extending no later than the end of 2029 would be more appropriate than a permanent easement. This would enable Impala to carry on commercial operations until its planned cessation in summer 2027, and then to undertake necessary safety and environmental work during the active closure phase personnel and equipment requiring continuous power remain on site. Thereafter, the transmission line is not required, so the term of the easement should come to an end.

102. Impala has no answer to this. It vaguely suggests that the transmission line "has the potential to serve other development in the Thunder Bay District, including mining, renewable energy and hydroelectric power, as well as potentially connecting currently off-grid Indigenous

⁷³ North Star responses to Impala IR 10(a), Attachment A, North American Palladium Ltd., Lac des Iles Mine, 2019 Addendum to the 2018 Mine Closure Plan Amendment, December 2019, Section 9, p. 9-1 (pdf p. 144 of 241)

⁷⁴ North Star Intervenor Evidence, para 21.

communities”.⁷⁵ However, the Impala Line is an unlicensed transmission line and Impala is an unlicensed transmitter. The line is not available for use to support other developments or customers in the area. Any such future use would require significant and costly regulatory, operational, organizational and infrastructure changes for Impala and the Impala Line, including being subject to rate regulation. Hypothetical future uses do not justify permanent expropriation of private property.

103. Moreover, there is no air of reality to Impala’s suggestion. Beyond a generic assertion about the “potential” for the line to be used beyond the closure of the Mine, Impala has not pointed to any tangible proposed use or interest. For example, there is no evidence from local Indigenous communities like Gull Bay First Nation that they have any desire to use the Impala Line after the Mine closes.

104. In response to OEB Staff-2(a)-(c), and contrary to the public announcements made in respect of the Mine, Impala asserts that no final decision has been made as to whether commercial production will cease, and if so whether it will be temporary or permanent. It then discusses the relationship between its decision and palladium prices, and say in OEB Staff-2(b) that “until a decision is made regarding permanent closure and full reclamation, post-operational activities will continue indefinitely to ensure compliance with environmental regulations. Indefinite power supply is required in the public interest to sustain post-operational environmental and safety activities, which cannot be realized with a temporary easement”.

105. Impala’s self-serving statements to the Board are inconsistent with its public statements and the plans specified in the formal published closure plan for the Mine, which confirm that power will be needed for only two years following cessation of commercial production during the active closure phase, after which there will be no personnel or equipment on site requiring continuous power.

⁷⁵ Application, para 43. See also AIC, para 6.

106. Ultimately, if Impala will commit to operating the Mine beyond 2027, let it say so in this public proceeding. If Impala is unwilling to commit itself to commercial operations at current employment levels beyond 2027, then the Board should give Impala's self-serving statements about future operations no weight.

107. Moreover, the Board should look at Impala's submissions relating to palladium prices in their full and proper context. Impala wants a permanent expropriation to maximize its commercial position if mineral prices are favourable, without having to account for the fair market value of that benefit by negotiating a commercial agreement to use North Star's land to make that profit.

5. *Issue 5: What conditions, if any, should be attached to the OEB's Order in this proceeding?*

108. In the event that the Board determines it has jurisdiction and that expropriation is in the public interest, the Board should attach terms to its order mirroring the 1996 Letter Agreement. Appendix A to this submission sets out appropriate conditions and protections for the landowner.

E. CONCLUSION

For the reasons set out above, North Star respectfully submits that:

- The Application should be denied on the basis that Impala lacks standing and the OEB lacks jurisdiction to grant authority for Impala to expropriate or to grant any other relief;
- In the alternative, if the OEB determines that it has jurisdiction to grant expropriation, the proposed expropriation is not in the public interest;
- In the further alternative, if the OEB determines that it has jurisdiction and expropriation is in the public interest, any expropriation should be limited to a temporary easement extending no later than the end of 2029; and

- If the OEB grants any authority to expropriate, it must include conditions to protect North Star's interests as the affected landowner, as listed in Appendix A.

All of which is respectfully submitted this 5th day of March 2026.

NORTH STAR FORESTRY LTD.
By its Counsel, Torys LLP



Jonathan Myers



Chris Kinnear Hunter

Appendix “A” – Minimum Conditions Appropriate to Any Easement

- i) This Easement is intended to enable the Impala Line to continue to transmit electricity to the Lac Des Iles Mine to support the ongoing commercial operation of the Mine and the active close out phase at the Mine after commercial operations cease. No other use of any kind by Easement Holder of the Easement rights or the Easement Property is permitted (nor may be authorized or permitted by Easement Holder). Any change in the intended use of the Impala Line shall cause this Easement to be terminated immediately. Any cessation of commercial operations at the Mine shall cause this Easement to terminate in three years.
- ii) This Easement is subject to compliance with the subdivision control provisions of the *Planning Act* (Ontario) (as amended) (the “**Act**”). If the Easement granted requires a consent under Section 50 of the Act, the Easement Holder will assume all survey and legal costs associated with any required application for the severance approvals required.
[Note to OEB: If a perpetual easement, or easement greater than at least 21 years duration is contemplated, then the following language should be included – “Until such time such consent is obtained, if required, the Easement shall have a term of 21 years less one day.”]
- iii) Easement Holder will ensure that the Easement Property boundaries are appropriately monumented and maintained. Monuments shall be maintained or established (i) at each change of direction and (ii) every 500 metres along any straight-line course in excess of 1000 metres. Easement Holder will provide to Landowner survey grade GPS locations of each monument that defines the boundaries of the Easement Property.
- iv) Easement Holder agrees that any vegetation clearing or maintenance operations within the Easement Property will conform to logging, clearing and environmental standards acceptable to Landowner and all applicable federal and provincial laws and regulations. Easement Holder agrees that it will undertake no vegetation clearing or maintenance operations on lands of the Landowner outside of the Easement Property.
- v) Easement Holder agrees that any road construction or maintenance operations within the Easement Property will conform to standards acceptable to Landowner and all applicable federal and provincial laws and regulations. Easement Holder agrees that it will undertake no road construction or maintenance operations on lands of the Landowner outside of the Easement Property.

- vi) Easement Holder's access across lands of the Landowner outside of the Easement Property will be at the discretion of Landowner.
- vii) Easement Holder shall ensure that all work completed on the Easement Property is conducted in compliance with the Occupational Health and Safety Act, and all other statutes, by-laws, regulations, orders and directions of the Government and regulatory authorities having jurisdiction affecting the operation of an electric transmission line.
- viii) Landowner retains the right to pass and repass the Easement Property with personnel and equipment upon existing roads, and to conduct any required maintenance or upgrade activities on existing roads to enable such passage. Landowner agrees that any road maintenance or upgrade activities on the Easement Property will conform to standards acceptable to Easement Holder and all applicable federal and provincial laws and regulations. Landowner may construct new roads across the Easement Property with the consent of Easement Holder as to location and construction design, which consent may not be unreasonably withheld, delayed, or conditioned.
- ix) Upon expiration or termination of the Easement, Easement Holder will put all roads to bed and restore all cleared lands to a natural, productive forested state through natural regeneration, planting or seeding, at Easement Holder's sole expense. All proposed silvicultural or vegetation prescriptions proposed for the Easement Property must be approved in writing by Landowner. Easement Holder will remove the transmission line, including without limitation all poles, lines, anchors, guys, transformers, and hardware. The provisions of this section shall survive the expiration or termination of this Easement.
- x) Easement Holder shall arrange and maintain at its expense, throughout the term of the Easement (and any required work after its expiration or termination), comprehensive general liability insurance which shall include coverage for personal injury, death and property damage, all on an occurrence basis with respect of all operations carried out upon the Easement Property and/or upon other lands of the Landowner in accessing (by separate permission) the Easement Property. Such insurance shall be (a) in form and amounts and (b) with insurance carriers each satisfactory to Easement Holder, acting in a commercially reasonable manner. The initial limit for any one occurrence or claim shall not be less than C\$5,000,000. Such insurance shall name Landowner as an additional insured. Within ten (10) days of request by the Landowner from time to time, Easement Holder shall provide a certificate of insurance evidencing the coverage required to be maintained by Easement Holder. Easement Holder shall obtain from the insurers under its

policy of insurance, an undertaking to notify the Landowner in writing at least thirty (30) days prior to the cancellation or material change of Easement Holder's policy.

- xi) Easement Holder agrees to comply with all applicable federal, provincial and local environmental laws, regulations, guidelines and policies concerning environmental protection, pollution, noise control and abatement while on the Easement Property. Easement Holder agrees not to bring onto Landowner's lands any material or substance dangerous to the environment, public health, crops water supplies or soil quality, without the prior written approval of Landowner. Easement Holder further agrees not to remove, transport or dispose of any waste materials from the site without first obtaining the necessary permits or approvals to remove, transport or dispose of any such materials on-site without the prior approval of Landowner. Easement Holder also agrees to report any spill or discharge of any material or substance immediately to Landowner and to the responsible governmental authorities and take all appropriate actions to stop the spillage, contain the spilled material and remediate the site immediately. Easement Holder agrees to follow any government direction or order relating to such matters.
- xii) Easement Holder shall ensure all its employees, servants, agents and contractors in any way involved with the operation and maintenance of the Impala Line are made aware of and at all times comply with the terms and conditions of this agreement and with all safety and environmental laws and all applicable rules and regulations.
- xiii) Easement Holder shall assume all liability and obligation for any loss, damage or injury (including death) to persons or property that would not have happened but for this agreement or anything done or maintained by Easement Holder under this Easement or intended so to be; and Easement Holder shall, at all times, indemnify and save harmless Landowner from and against all such loss, damage, or injury and all actions, suits, proceedings, costs, charges, damages, expenses, claims or demands arising therefrom or connected therewith. The provisions of this section shall survive the expiration or termination of this Easement.
- xiv) Easement Holder agrees to indemnify and save Landowner and any of its servants, agents or employees harmless from and against all claims, demands, actions, causes of action, fines, damages, losses, costs, liabilities, expenses of any kind whatsoever (including without limitation, legal fees and the expenses incurred in connection with the enforcement of the indemnity) which may be brought or enforced against Landowner. Easement Holder agrees to pay any government fine or penalty forthwith. The provisions of this section shall survive the expiration or termination of this Easement.

- xv) During the term of the Easement, the Impala Line will at all times remain the property of Easement Holder and Easement Holder will request a separate tax assessment for and pay all additional taxes resulting from the transmission line property and its continuing occupation of the Easement Property.
- xvi) Easement Holder shall promptly notify Landowner in writing of any change of ownership of Easement Holder.