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Energy | de l'énergie
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DECISION AND ORDER

EB-2025-0286

IMPALA CANADA LTD.

Application for approval to expropriate interests in two parcels of lands in the District of Thunder Bay in Ontario

BEFORE: Shahrzad Rahbar
Presiding Commissioner

Damien A. Côté
Commissioner

Robert Dodds
Commissioner

May 21, 2026



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1 OVERVIEW

This is a Decision and Order of the Ontario Energy Board on an application by Impala Canada Ltd. (Impala) for authority to expropriate permanent corridor easements on 2 parcels of land to allow it to continue the operation and maintenance of an existing 115 kV transmission line that is owned and operated by Impala (Impala Line).

For the reasons provided in this Decision, the Ontario Energy Board finds that Impala is not eligible to apply for expropriation related to the Impala Line, and the application is denied.

2 CONTEXT AND PROCESS

On October 3, 2025, Impala applied to the OEB under section 99(1) of the *Ontario Energy Board Act, 1998*, (OEB Act) for an Order granting authority to expropriate permanent corridor easements on 2 parcels of land (the Subject Lands) on which the Impala Line is situated. The Impala Line is a private transmission line which exclusively serves the Lac des Iles (LDI) Mine located approximately 130 km northwest of Thunder Bay. The existing easements, registered in 1999, state that they were granted in perpetuity, with an initial term of 25 years subject to renewal.

The OEB issued its Notice of Hearing on October 27, 2025, and received a request to intervene from North Star Forestry Ltd. (North Star), the owner of the Subject Lands.

In Procedural Order No. 1, issued on December 8, 2025, the OEB approved North Star's intervention request, its request for cost eligibility, and its request to submit evidence relevant to the proceeding, and set the schedule for written discovery through interrogatories and for submissions.

The OEB issued its Decision on Issues List on December 17, 2025. North Star submitted its evidence to the OEB on January 8, 2026, OEB staff and North Star filed their interrogatories to Impala with the OEB on January 22, 2026, and OEB staff and Impala filed their interrogatories to North Star with the OEB on January 29, 2026.

Impala and North Star filed their responses to interrogatories with the OEB on February 5, 2026, and February 12, 2026, respectively. Impala filed its argument-in-chief with the OEB on February 23, 2026. North Star filed its final argument on March 5, 2026, and Impala's reply submission was filed on March 16, 2026.

3 DECISION ON THE ISSUES

In its Decision on Issues List issued on December 17, 2025, the OEB approved the following issues for the purposes of this proceeding:

1. Does the OEB have jurisdiction under s. 99 to consider the application and grant the requested relief?
2. Have the 1999 Impala easements been extinguished?
3. Is the proposed expropriation in the public interest?
4. Has Impala requested expropriation of the minimum legal interest that it requires for the Subject Lands?
5. What conditions, if any, should be attached to the OEB's Order in this proceeding?

As described in further detail below, the OEB has determined that Impala does not meet the eligibility criteria under section 99(1) to apply for expropriation, and the OEB therefore does not have the jurisdiction to hear the application. The OEB is denying the application on this basis and therefore does not need to address issues 2 through 5.

3.1 Does the OEB have jurisdiction under section 99 of the OEB Act to consider the application and grant the requested relief?

Section 99 of the OEB Act establishes the OEB's power to grant an applicant authority to expropriate land for a "work", which includes an electricity transmission line.¹ Under section 99, any person who has been granted leave by the OEB to construct certain works, including electricity transmission lines under section 92 of the OEB Act, or is exempted under the OEB Act from the requirement to obtain leave, may apply for authority to expropriate land for such works. The relevant portion of the Act is shown below:

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

¹ Section 99 of the OEB Act falls under Part VI of the Act, which sets out the requirements for leave to construct, expropriation and related matters. A "work" is defined in this part of the OEB Act as a hydrocarbon line, electricity distribution line, electricity transmission line, interconnection or station.

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.*

Impala argues that it is eligible to apply for expropriation (and that the OEB has jurisdiction to hear its application) under both section 99(1)1 and 99(1)2.

In respect of section 99(1)1, Impala concedes that it has not received leave to construct under the current OEB Act, and notes that no OEB approval was required to construct the line when it was built around 1996. It argues, however, that the Impala Line was constructed after receipt of all approvals that were required at the time of construction, and that this constitutes leave under a predecessor to Part VI of the OEB Act.

North Star argues that the various approvals obtained around 1996 cannot be considered to be leave under a predecessor to Part VI of the OEB Act. In North Star's view, a "predecessor of Part VI of the OEB Act" refers to earlier legislative regimes governing the approval of the need for and construction of an electricity transmission line. North Star states that the primary (and perhaps only) predecessor to Part VI of the OEB Act is certain provisions of the *Power Corporation Act, 1990* (Power Corporation Act), and that the Impala Line did not receive any approvals under that act.

In respect of section 99(1)2, Impala states that it believes that the OEB has jurisdiction to grant the requested relief as Impala would be exempt from requiring leave to construct under the current regulations to the OEB Act,² and that it intends to indefinitely "reinforce" the Impala Line through ongoing maintenance work.

North Star rejects this reasoning and states that section 99(1)2 is not available to Impala as the Impala Line is an existing line, and it believes that routine maintenance activities do not constitute "reinforcement" and thus Impala has shown no evidence of any intention to construct, expand or reinforce the line.³

² O. Reg. 161/99, 6.2(1)(e) states that the requirement to obtain leave to construct does not apply to: "a person, other than a licensed transmitter or licensed distributor, that constructs, expands or reinforces an electricity transmission line, if the cost of the construction, expansion or reinforcement of the line is to be exclusively paid for by the person"

³ North Star's Submission, March 5, 2026, pp. 13-14

Impala claims that there is precedent for the OEB granting expropriation to restore historic easements for existing infrastructure in a case where the OEB restored easements to Enbridge Gas Distribution Inc. (Enbridge).⁴ North Star argues that this case is not relevant in the context of the current proceeding.

Findings

For the reasons described below, the OEB finds that Impala does not meet the eligibility criteria under section 99(1)1 or 99(1)2 of the OEB Act, and is ineligible to apply for expropriation. The OEB therefore lacks the jurisdiction to consider this matter, and the application is denied.

This is an unusual application. Firstly, Impala is applying for authority to expropriate easements over two parcels of land on which it has operated a dedicated transmission line for almost 30 years. More commonly, an expropriation application is made *before* transmission facilities are constructed. Secondly, Impala seeks expropriation to provide certainty for the future “regardless of the status of its legal rights under the existing Easements”.⁵ Typically expropriation is sought as an extraordinary measure to acquire a legal right, and its use is strictly construed.

Section 99 of the OEB Act establishes who can apply for expropriation. To be eligible to apply for expropriation, a person must meet the criteria under either 99(1)1 or 99(1)2 – they do not need to meet the criteria under both. The “Part” referred to in section 99(1)1 is Part VI of the OEB Act which sets out the OEB’s powers related to transmission and distribution lines. It includes the OEB’s power to grant leave to construct for electricity transmission lines (sections 92 and 96), and its powers to grant expropriation (section 99).

Eligibility under Section 99(1)1: Is Impala a person who has leave to construct under Part VI of the OEB Act or a predecessor to Part VI of the OEB Act?

Impala does not have leave to construct under Part VI of the current OEB Act (i.e., the *Ontario Energy Board Act, 1998*). The Impala Line was constructed around 1996, prior to the enactment of the current OEB Act. Impala did not, and could not have, obtained leave under Part VI of the current OEB Act.

⁴ EB-2011-0391

⁵ Impala Argument-in-Chief, para. 21, p. 7

The question that then arises is whether Impala (or its predecessors) obtained leave to construct the Impala Line from some predecessor to Part VI of the OEB Act.

When the Impala Line was built around 1996, the OEB had minimal mandate for the regulation of the electricity sector, and it did not have authority over the construction of electricity transmission lines. In its argument in chief, Impala states that “leave under (...) a predecessor of this Part’ should be interpreted to include transmission lines that received all necessary approvals, either from the OEB or from any other agency.”⁶

Impala states that, to the best of its knowledge, all approvals required at the time of construction were obtained for the Impala Line.

In response to a staff interrogatory about the approvals obtained around 1996 for the construction of the Impala Line, Impala cites the following permits issued by the Ministry of Natural Resources: a land use permit for a powerline right of way, two work permits for forestry and construction of a powerline, and two licenses to harvest Crown forest resources.⁷

For its part, North Star argues that “a predecessor of this Part” refers to earlier legislative schemes governing the approval of the need for and construction of an electricity transmission line, such as certain provisions of the Power Corporations Act which related only to lines constructed by Ontario Hydro.⁸ North Star states that it has identified “no equivalent provision that would have applied to a privately owned transmission line connection” such as the Impala Line.⁹ North Star submits that none of the permits obtained for the Impala Line upon construction can be considered the equivalent of leave to construct, and that these were simply administrative permits that allow for temporary occupancy or other discrete activities on Crown Lands. In North Star’s view these permits would not have authorized the need for, or construction of the Impala Line pursuant to legislation.¹⁰

The OEB is not persuaded that the permits obtained for the Impala Line around 1996 constitute leave under a predecessor act to the OEB Act. The leave referred to in section 99(1)1 is an order allowing a person to construct an electricity transmission line. The version of the OEB Act that was in place in 1996 was the *Ontario Energy Board Act, 1990*, and it had no provisions for granting leave to construct electricity

⁶ Impala Argument-in-Chief, para. 47, pp. 13-14

⁷ Interrogatory Responses, OEB Staff-1(e)

⁸ North Star Submission, para. 51, p. 15

⁹ North Star Submission, para. 53, p. 16

¹⁰ North Star Submission, para. 49.

transmission lines. The closest predecessor provisions for leave under Part VI of the current OEB Act is the Power Corporation Act, under which the Lieutenant Governor in Council could authorize Ontario Hydro (the predecessor to Hydro One) to construct transmission lines and to acquire lands for that purpose (including through expropriation). These provisions of the Power Corporation Act applied only to Ontario Hydro, and the Impala Line did not, and could not have, obtained leave under this act. As such, the OEB finds that Impala did not obtain leave under a predecessor to Part VI of the OEB Act.

The OEB does not accept that the permits obtained from the Ministry of Natural Resources around 1996 are a predecessor to the leave requirements under Part VI of the OEB Act. There is limited information on the record regarding the process required to obtain these permits, exactly what they authorize, and for how long. They are not the equivalent of the approval regime set out in the Power Corporation Act.¹¹

Thus, based on the information before it, the OEB finds that for the purposes of this application the predecessor to Part VI of the OEB Act, as it relates to granting leave to construct electricity transmission lines, was the Power Corporation Act. As the Impala Line was not constructed by Ontario Hydro, leave under the Power Corporation Act was not available to it. The OEB finds merit in North Star's argument:

(...) reference to a predecessor of Part VI (...) should be understood as a transitional provision that would have allowed expropriation by (...) successors of Ontario Hydro in respect of the lines for which Ontario Hydro had obtained leave to construct under the Power Corporations Act prior to the restructuring of Ontario Hydro.¹²

For these reasons, the OEB finds that Impala does not meet the criteria for eligibility to apply for expropriation under Section 99(1) of the OEB Act.

Eligibility under Section 99(1)2: Does Impala's intention to continue to maintain the Impala Line constitute an "intent to construct, expand or reinforce an electricity transmission line"?

The OEB does not accept Impala's arguments that it is eligible to apply for expropriation under section 99(1)2.

¹¹ See in particular section 28(2)(g).

¹² North Star Submission, para. 55, p. 16

There are two requirements under section 99(1)2: 1) that a person intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection, and 2) that person is exempted under the OEB Act from the requirement to obtain leave to construct. Both requirements must be met for the person to be eligible to apply for expropriation.

There is no evidence or argument on the record that Impala intends to construct or expand an electricity transmission line, or to make an interconnection. The Impala Line was constructed close to 30 years ago, and there are no apparent plans to expand the line, or to make any interconnection. The remaining question, therefore, is whether Impala intends to reinforce the Impala Line.

Impala argues that it intends to indefinitely maintain the integrity of the Impala Line, including by replacing any damaged or worn aspects of the electrical infrastructure. Impala argues that this amounts to “reinforcement” for the purposes of section 99(1)2, and that it is therefore eligible to apply for expropriation. Impala further argues that:

Unlike “leave” and “exempted”, which are legal triggers under the OEB Act, the requirement that a person “intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line” is much more ambiguous [and] (...) should be interpreted to include its intended works on the Impala Line.¹³

North Star disagrees and states that the language is vague and submits that Impala clearly fails to meet the criteria under section 99(1)2. North Star argues that there is no evidence on the record substantiating an intent by Impala to expand (i.e., increase the length or transmission capacity) or reinforce (i.e., upgrade or strengthen) the Impala Line. All Impala proposes to do is conduct routine ongoing maintenance of the Impala Line, and North Star argues that this cannot be considered expansion or reinforcement, let alone construction. North Star underscores that Section 99 of the OEB Act “is not to cure deficient land rights in circumstances where existing infrastructure is to be operated in the ordinary course of business”.¹⁴

The OEB does not accept Impala’s arguments that it is eligible to apply for expropriation under section 99(1)2. Neither “reinforcement” nor “maintenance” are defined in the OEB Act. However, it is the OEB’s view that they are not synonyms.

¹³ Impala Argument-in-Chief, para. 50, p. 14

¹⁴ North Star Submission, para. 58, p.17

The OEB observes that section 92 of the OEB Act requires (i.e., absent an exemption) an order granting leave to construct for the reinforcement of a transmission line. One way to consider this question is to ask whether the types of activities Impala describes would ordinarily trigger the requirement to obtain a leave to construct. As described in the evidence and submissions, the types of work that Impala is contemplating for the Impala Line appear to be ordinary maintenance of the type that all transmitters routinely conduct on their transmission lines. Impala states that it intends to indefinitely maintain the integrity of the Impala Line¹⁵, and that it requires expropriation for the continued maintenance and operation of the Impala Line¹⁶. This type of work does not trigger the requirement to obtain leave to construct, and indeed if it did, the OEB would presumably be inundated with leave to construct applications related to ongoing ordinary maintenance work for the many transmission lines in the province.

The OEB has granted leave to construct approvals for reinforcements in the past, but these were in cases where a line was being materially upgraded – for example in an application from Hydro One Networks Inc.¹⁷ leave was granted for reinforcement where a line was upgraded from 115 kV to 230 kV. In the OEB’s view, if work being conducted on a transmission line is not reinforcement for the purposes of section 92, it is also not reinforcement for the purposes of section 99.

The OEB also notes that the Transmission System Code (TSC) appears to consider maintenance and reinforcement to be different things. Section 3B.1 states (emphasis added), “a transmitter shall (...) maintain the reliability and integrity of its Tx system **and** reinforce or expand its transmission system as required to meet load growth”.¹⁸

In the OEB’s view, some manner of upgrade is required to the transmission line, such as an increase in capacity, to constitute reinforcement. The activities described by Impala do not qualify as reinforcement. As the activities that Impala intends to conduct are not construction, expansion, or reinforcement, nor does it intend to make an interconnection, it is not eligible to apply for expropriation under section 99(1)2.

The Enbridge Decision

Impala cites as a precedent a 2012 OEB decision where the OEB authorized Enbridge Gas Distribution Inc. (Enbridge) to expropriate easements over certain lands to allow

¹⁵ Impala Argument-in-Chief, para. 54, p. 15

¹⁶ Impala Argument-in-Chief, para. 23, p. 7-8

¹⁷ EB-2023-0199

¹⁸ [Transmission System Code](#), March 31, 2025, p. 18

the continued operation of an existing natural gas pipeline which had been installed in the 1970s.¹⁹ However, the OEB notes key differences between the Enbridge application and Impala's application that support a different result.

Enbridge's eligibility to apply for expropriation under sections 99(1)1 or 99(1)2 appears to have been accepted by the parties to the proceeding, was not actively argued in final submissions, and was not directly addressed in the OEB's decision. In its application, Enbridge discussed the regulatory regime applicable to the natural gas sector, which differs in some respect from that for electricity. Based on the record of that proceeding, it is not known whether leave to construct had ever been obtained under a predecessor to Part VI of the OEB Act, though Enbridge noted that under section 58 or the *Public Utilities Act* it had the ability to seek to expropriate lands without the need for a leave to construct.²⁰ In approving Enbridge's application, the OEB focused exclusively on the public interest test under section 99(5).

The question currently before the OEB is whether Impala is eligible to apply for expropriation under sections 99(1)1 or 99(1)2 of the OEB Act. Eligibility to apply for expropriation was not an issue that was addressed by the OEB in the Enbridge case, nor does eligibility seem to have been disputed by any party to that proceeding. In that light, the Enbridge case provides little guidance to the OEB in its current analysis.

¹⁹ Impala Argument-in-Chief, para. 61-63, p. 17

²⁰ EB-2011-0391, Ex. B, Tab 2, para. 32.

4 CONCLUSION

For the reasons set out above, the OEB denies Impala's application for expropriation on the basis that Impala does not meet the eligibility criteria to apply for expropriation under section 99(1) of the OEB Act. As the OEB determined that Impala does not meet the eligibility criteria to seek expropriation under Section 99 of the OEB Act, the OEB will not make a determination on the remaining issues.

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. North Star Forestry Ltd. shall file with the OEB and forward to Impala Canada Ltd. its cost claim in accordance with the OEB's *Practice Direction on Cost Awards* on or before **June 4, 2026**.
2. Impala Canada Ltd. shall file with the OEB and forward to North Star Forestry Ltd. any objections to the claimed cost of North Star Forestry Ltd. on or before **June 11, 2026**.
3. If Impala Canada Ltd. objects to North Star Forestry Ltd.'s cost, North Star Forestry Ltd. shall file with the OEB and forward to Impala Canada Ltd. its responses, if any, to the objections to cost claim on or before **June 18, 2026**.
4. Impala Canada Ltd. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto May 21, 2026

ONTARIO ENERGY BOARD

Ritchie Murray
Registrar