



BY EMAIL AND RESS

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Ritchie Murray
Acting Registrar
Ontario Energy Board
Suite 2700, 2300 Yonge Street
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Dear Ritchie Murray,

RE: Notice of Motion by Impala Canada Ltd. to Review and Vary the OEB's Decision and Order in EB-2025-0286

We are legal counsel to Impala Canada Ltd. ("**Impala**"), the Applicant in the Application for authority to expropriate interests in two parcels of lands in the District of Thunder Bay in Ontario. On May 21, 2026, the Ontario Energy Board ("**OEB**") issued its Decision and Order in respect of the Application. Enclosed is Impala's Notice of Motion to Review and Vary the OEB's Decision.

Sincerely,

Raivo Uukkivi
Partner
Encl.

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. for authority to expropriate land for the purpose of operating a transmission line to Impala Canada Ltd.’s mine (“**Application**”);

AND IN THE MATTER OF the Ontario Energy Board’s Decision and Order dated May 21, 2026;

AND IN THE MATTER OF Rules 8, 40, 42 and 43 of the Ontario Energy Board’s *Rules of Practice and Procedure*.

NOTICE OF MOTION

Impala Canada Ltd. (“**Impala**”) will make a motion to the Ontario Energy Board (the “**OEB**”) on a date and time to be determined by the OEB.

PROPOSED METHOD OF HEARING: Impala proposes that the Motion be heard in person.

THE MOTION IS FOR:

1. An Order that the Motion satisfies the “threshold test” in Rule 43.01 of the OEB’s *Rules of Practice and Procedure* because it raises relevant issues that are material enough to warrant a review of the OEB’s Decision and Order, in the matter of EB-2025-0286, dated May 21, 2026 (the “**Decision**”);
2. An Order for a hearing of the Motion on its merits in such manner as the OEB deems appropriate, having regard for Impala’s preference that the Motion be heard orally;
3. An Order that the Motion be heard by a differently constituted panel of the OEB;

4. An Order staying the implementation of the Decision, including the OEB's finding that Impala is ineligible to expropriate lands pursuant to subsection 99(1)1 of the *OEB Act* pending the determination of this Motion;
5. An Order reviewing the Decision in respect of the following:
 - (a) the finding that Impala does not meet the eligibility criteria under subsection 99(1)1 or 99(1)2 of the *OEB Act*, is not eligible to apply for expropriation related to the Impala Line and that the OEB therefore lacks jurisdiction to consider the matter;
 - (b) the finding that approvals and permits authorizing the construction and operation of the Impala Line prior to the *OEB Act* do not constitute leave to construct under a predecessor of Part VI of the *OEB Act* for the purposes of satisfying the eligibility criteria to apply for authority to expropriate land under subsection 99(1)1 of the *OEB Act*;
 - (c) the scope of the OEB's jurisdiction to hear applications from proponents of existing electricity transmission or distribution lines that were unable to access authorizations under the *Power Corporation Act*, RSO 1990, c P.18 but otherwise received the requisite authorizations to construct such infrastructure before the implementation of the *OEB Act*; and
 - (d) the finding that Impala is not eligible to apply for expropriation under subsection 99(1)2 of the *OEB Act* as it has not demonstrated that it intends to "reinforce" the Impala Line but is exempt from the requirement to obtain leave to construct;
6. An Order varying the Decision in respect of the following:
 - (a) by substituting the findings of the OEB with a finding that the requisite authorizations acquired in connection with the construction of the Impala Line at or around 1996 constitute leave to construct under a predecessor to Part VI of the *OEB Act* for the purposes of advancing an application for authority to expropriate pursuant to subsection 99(1)1 of the *OEB Act*;
 - (b) by substituting the findings of the OEB with a finding that Impala is eligible for authority to expropriate pursuant to subsection 99(1)1 of the *OEB Act*; or

(c) in the alternative, that Impala is eligible for authority to expropriate pursuant to subsection 99(1)2 of the *OEB Act* as it intends to reinforce the Impala Line and is exempt from the requirement to obtain leave to construct; and

(d) by supplementing the findings of the OEB with a finding that Impala's Application is in the public interest pursuant to subsection 99(5) of the *OEB Act*, thereby granting Impala authority to expropriate lands for the Impala Line; and

7. Such further and other relief as Impala may request and the OEB may permit.

A. THE GROUNDS OF THE MOTION ARE:

1. *The Proceeding*

8. On October 3, 2025, Impala applied to the OEB under section 99 of the *OEB Act* for authority to expropriate a permanent easement over two parcels of land owned by North Star Forestry Ltd. ("**North Star**"). Impala sought a permanent easement for the safe and efficient operation of a 115 kV transmission line and associated facilities (the "**Impala Line**"), which was constructed at or around 1996 and has been in operation for the past 30 years as the sole source of power for the Lac Des Iles Mine (the "**LDI Mine**").

9. The OEB granted North Star intervenor status on December 8, 2025.

10. Impala acknowledged that it had not obtained leave to construct under section 92 of the *OEB Act*.¹ Instead, Impala submitted that the approvals and permits authorizing the construction and operation of the Impala Line prior to the OEB's jurisdiction constitute leave to construct under a predecessor to Part VI of the *OEB Act* for the purposes of subsection 99(1)1 of the *OEB Act*.² In the alternative, Impala submitted that it is eligible for expropriation authority on the basis that it intends to indefinitely reinforce the Impala Line through ongoing operations, routine maintenance work, and subject to IESO-controlled grid connections which, taken as a whole, are all aspects underlying the objectives of safe reliable electricity transmission operations found in the *OEB Act*'s

¹ Impala Written Submissions, in the matter of EB-2025-0286, dated February 23, 2026 at para 28 [Impala Written Submissions].

² Impala Written Submissions at paras 47-48.

legislative scheme and specifically, the leave requirement (or exemption therefrom) under subsection 99(1)2 of the *OEB Act*.³

11. Impala asked the OEB to consider its Application on the merits under subsection 99(5) of the *OEB Act*, arguing that granting the Application was in the public interest based on the following submissions:

(a) there is need for indefinite power at the LDI Mine, further to the operating and closure plans for the LDI Mine;

(b) the Impala Line is the only option for powering the LDI Mine, as the LDI Mine is not authorized to operate on power produced by on-site diesel generators on an indefinite basis;

(c) the LDI Mine, as the only Canadian source of pure palladium, contributes significantly to the local and national economies and is important for Ontario's security, resilience and economic development objectives⁴;

(d) the Impala Line could provide power to neighboring communities;

(e) there are no suitable alternative routes for the Impala Line, as relocation is inherently an inefficient outcome that results in unnecessary impacts to sensitive environmental regions on neighboring lands;

(f) Impala requested expropriation of the minimum legal interests required to safely and reliably operate the Impala Line; and

(g) expropriation is the only option available to Impala and is adequate to resolve the outstanding issue of compensation for the permanent easement.⁵

³ Impala Written Submissions at para 53.

⁴ The OEB's statutory objectives with respect to regulating electricity includes supporting economic growth, consistent with the policies of the Government of Ontario: *OEB Act*, s 1(1)2.1.

⁵ Impala Written Submissions at paras 64-86.

2. The Decision

12. On May 21, 2026, the OEB issued its Decision dismissing Impala's Application for authority to expropriate. The OEB found that Impala was ineligible for expropriation under subsection 99(1) on two grounds:

(a) the approvals and permits authorizing the construction and operation of the Impala Line received prior to the enactment of the *OEB Act* did not constitute leave to construct under a predecessor to Part VI of the *OEB Act* for the purposes of subsection 99(1)1 of the *OEB Act*⁶; and

(b) Impala's intention to conduct routine maintenance work on the Impala Line did not constitute an intention to "reinforce" the Impala Line for the purposes of satisfying the leave requirement (or accessing an exemption therefrom) further to subsection 99(1)2 of the *OEB Act*.⁷

13. Given the OEB's finding that Impala is ineligible for expropriation authority under subsection 99(1) of the *OEB Act*, the OEB declined to comment on whether Impala's Application was in the public interest under subsection 99(5).⁸

3. The Review Motion Standard

14. Subject to Rule 40.03, Rule 40.02 of the OEB's *Rules of Practice and Procedure* allows any person to bring a motion requesting the OEB review all or part of a final order or decision, and to vary, suspend or cancel the order or decision.

15. Rule 42.01(a) of the OEB's *Rules of Practice and Procedure* requires that a notice of motion set out the grounds for the motion, which may include:

(a) the OEB made a material and clearly identifiable error of fact, law or jurisdiction;

(b) new facts have arisen since the decision or order was issued that, had they been available at the time of the proceeding to which the motion relates, could if proven

⁶ Decision and Order, in the matter of EB-2025-0286, dated May 21, 2026, PDF p 9 [OEB Decision].

⁷ OEB Decision, PDF p 11.

⁸ OEB Decision, PDF p 13.

reasonably be expected to have resulted in a material change to the decision or order;
or

(c) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

16. This list of grounds is “not an exhaustive list”. The motion must raise a question as to the correctness of the order or decision.⁹
17. The moving party must demonstrate that the findings are contrary to the evidence before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. The moving party must also demonstrate that the error is material and relevant to the outcome of the decision, and that correcting the error would change the outcome of the decision.¹⁰

4. *The Errors in the Decision*

18. The OEB made a material and clearly identifiable error in the Decision with respect to the OEB’s jurisdiction to hear applications from proponents of electricity infrastructure that were unable to obtain authorizations under the *Power Corporation Act*, RSO 1990, c P.18¹¹, but otherwise received the requisite approvals and permits authorizing the construction and operation of such infrastructure prior to the enactment of Part VI of the *OEB Act*.¹²
19. That error in the OEB’s reasons led to an incorrect finding that the approvals and permits authorizing the construction and operation of the Impala Line prior to the enactment of Part VI of the *OEB Act* (when the OEB was given statutory jurisdiction over leave to

⁹ Decision on Motion to Review and Vary by the City of Hamilton, in the matter of EB-2016-0005, dated March 3, 2016, p 4.

¹⁰ Decision with Reasons, Motions to Review the Natural Gas Electricity Interface Review Decision, in the matters of EB-2006-0322/0338/0340, dated May 22, 2007, pp 17-18.

¹¹ The [Power Corporation Act, RSO 1990, c P.18](#) applied only to Ontario Hydro which, after its statutory demerger in 1998, was split into separate entities. The transmission component of the former Ontario Hydro is now within Hydro One Networks Inc.

¹² Prior to the Ontario Hydro demerger and the enactment of the *Electricity Act, 1998*, the OEB did regulate most aspects of the electricity sector, including approving electricity transmission lines or authorizing expropriation of land. The former [Ontario Energy Board Act, RSO 1990, c.O.13](#) was repealed in November 1998 when the *OEB Act, 1998* was enacted.

construct electricity transmission lines) do not constitute leave to construct under a predecessor of Part VI of the *OEB Act*. This finding supported the OEB's conclusion that Impala is ineligible for expropriation authority under subsection 99(1)1 of the *OEB Act*.

20. The OEB also ignored, or provided insufficient reasons in its Decision to address, submissions made by Impala. Specifically, the OEB failed to grapple with Impala's submissions on the absurd and inefficient consequences that result from the OEB finding that Impala was ineligible for expropriation authority on the basis that the Impala Line predates the OEB's jurisdiction.¹³ The OEB also ignored or failed to grapple with Impala's argument that the expropriation authority under subsection 99(1)1 should be interpreted broadly in light of the legislative objectives of the *OEB Act*, which include regulating the electricity sector in a manner that supports economic growth, consistent with the policies of the Government of Ontario.¹⁴
21. The result of the aforementioned errors is an illogical Decision that not only fails to promote the OEB's statutory objectives and creates a regulatory paradigm that fails to comport with the plain and ordinary meaning of the *OEB Act*, but also fails to follow longstanding and well respected rules of statutory construction that give the *OEB Act* a fair, large and liberal interpretation that best ensures the attainment of its beneficial objects to continue existing electrical infrastructure.

5. The Errors are Material

22. Impala submits that the foregoing errors outlined in Part A, Section 4 above (under the heading "The Errors in the Decision") are material and warrant intervention by the OEB.
23. First, because of the OEB's finding that Impala is ineligible for expropriation authority under subsection 99(1) on the basis of the OEB's lack of jurisdiction, the OEB declined to properly assess the proper interpretation of this legislation that was brought into force with widespread and existing electrical infrastructure. This resulted in a failure to assess whether Impala's Application was in the public interest under section 99(5) of the *OEB Act*. The OEB's finding is an error concerning the scope of the OEB's jurisdiction that

¹³ See Impala Written Submissions at paras 56-59.

¹⁴ See Impala Written Submissions at paras 35-37 and *OEB Act*, s 1(1)2.1.

prevented Impala's Application from being assessed on its compelling merits. The merits of the application assist in demonstrating how the statutory scheme must benefit existing electricity infrastructure that was installed with appropriate authorizations and permits that were required at the time.

24. Second, the OEB's finding leads to the absurd and inefficient consequence that Impala must propose and carry out line reconstruction work in order to satisfy the leave requirement under subsection 99(1)2 of the *OEB Act*, and then return to the OEB with a new application for authority to expropriate. That result materially harms Impala by requiring it to incur unnecessary delay, cost and regulatory burden.
25. Finally, the OEB's Decision has the absurd and unintended consequence of establishing a category of unregulated transmission lines and facilities that creates a non-market driven leverage opportunity for landowners, which materially impacts electricity transmitters such as Impala and customers that are dependent on the continued supply of electricity, such as the LDI Mine. The OEB's Decision creates consequences not intended by applicable law that materially harms Impala and other transmission line proponents in Ontario by creating a category of unregulated users that cannot access relief that is otherwise available for existing transmission lines if the transmission infrastructure was built after the enactment of the *OEB Act*.

B. THE STAY REQUEST

26. Pursuant to Rule 42.01(b) of the OEB's *Rules of Practice and Procedure*, Impala requests a stay of the OEB's Decision until this Motion is determined on a final basis. A stay is appropriate to avoid uncertainty and disruption in relation to the continued operation of the Impala Line while Impala pursues the relief sought in this Motion.

C. THE THRESHOLD TEST IS MET

27. Rule 42.01(e) of the OEB's *Rules of Practice and Procedure* requires a clear explanation of why a motion should pass the threshold described in Rule 43.01. Rule 43.01 provides that the Review Panel may consider the threshold question of whether the motion raises relevant issues that are material enough to warrant a review of the decision or order on the merits.

28. The grounds set out in this Motion raise material and clearly identifiable errors that could reasonably be expected to result in a material change to the Decision, as explained in Part A, Section 5 above (under the heading “The Errors are Material”).
29. The Decision prevents Impala from advancing an application for authority to expropriate lands for the Impala Line unless it first pursues a redundant application for leave to upgrade or reconstruct the line. Given the time and resources required for Impala to do so, and for the OEB to consider such an application, Impala is materially harmed by the Decision. If leave is granted, reconstruction of the Impala Line could also result in adverse impacts to protected areas and wildlife. Further, the continued operation of the Impala Line is necessary to support the safe and environmentally sound operation of the LDI Mine in compliance with its operating and closure plans. Utilizing diesel-powered generators to supply power to the LDI Mine, rather than the Impala Line, is environmentally and operationally untenable.
30. Should the OEB find it necessary to consider the threshold question, Impala requests the opportunity to make written submissions.

D. RULES AND OTHER GROUNDS

31. Rules 8, 40, 41, 42, and 43 of the OEB’s *Rules of Practice and Procedure*.
32. Such further and other grounds and material as counsel may advise, and the OEB may permit.

E. DOCUMENTARY EVIDENCE

33. The following documentary evidence will be used at the hearing of the Motion:
 - (a) the OEB’s Decision and Order in EB-2025-0286, dated May 21, 2026;
 - (b) materials from the record of the EB-2025-0286 proceeding, including but not limited to pre-filed evidence, intervenor evidence, interrogatories, correspondence and submissions;
 - (c) Impala’s submissions and Motion Record on this Motion, which will be delivered in accordance with the OEB’s procedural order(s) in regard to the Motion; and

(d) such further and other documentary evidence as counsel may advise, and the OEB may permit.

June 10, 2026

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AND TO: All Intervenors in EB-2025-0286