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RESS & EMAIL

July 29, 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: EB-2026-0178 - Notice of Motion by Impala Canada Ltd. ("Impala") to Review and Vary the OEB's Decision and Order in EB-2025-0286 re Expropriation – Intervenor Submission of North Star Forestry Ltd.

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 July 13, 2026, and the OEB's letter issued July 27, 2026 which adjusted the procedural timelines, we are hereby filing North Star's Submission on the motion brought by Impala.

A copy has been served on the applicant.

Yours truly,

Jonathan Myers

cc: Muhammad Yunus, OEB Case Manager
Michael Millar, OEB Counsel
Tim Hill, Impala Canada (Applicant)
Raivo Uukkivi, 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 **"Act"**);

AND IN THE MATTER OF Application EB-2025-0286 by Impala Canada Ltd. under section 99(1)2 of the Act for authority to expropriate land for the purpose of operating a transmission line to Impala Canada Ltd.'s mine;

AND IN THE MATTER OF a Motion by Impala pursuant to Rule 42 of the Ontario Energy Board's *Rules of Practice and Procedure* to Review and Vary the May 21, 2026 Decision and Order in EB-2025-0286.

SUBMISSIONS OF THE INTERVENOR,
NORTH STAR FORESTRY LTD.
(MOTION TO REVIEW)

July 29, 2026

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A. OVERVIEW

1. North Star Forestry Ltd. (**“North Star”**) makes these submissions in accordance with the Notice of Hearing and Procedural Order No. 1 (**“PO1”**) in EB-2026-0178, dated July 13, 2026. These submissions respond to the written submissions of Impala Canada Ltd. (**“Impala”**) dated July 20, 2026 seeking to vary the Decision and Order of the Ontario Energy Board (**“OEB”** or the **“Board”**) dated May 21, 2026 in EB-2025-0286 (the **“Decision”**).

2. North Star was approved as an intervenor in this proceeding pursuant to PO1. North Star was also the sole intervenor in the underlying proceeding, EB-2025-0286, in which the Board denied Impala’s application (the “**Original Application**”) for authority to expropriate interests in two parcels of land owned by North Star in the District of Thunder Bay, Ontario along which Impala operates a private transmission line (the **“Impala Line”**).

3. The Board denied the Original Application because Impala does not meet the eligibility criteria under section 99(1) of the *Ontario Energy Board Act, 1998* (the **“*Act*”**) to apply for authority to expropriate land. As such, it was unnecessary for the Board to address Impala’s application further, including whether the proposed expropriation would otherwise be in the public interest under section 99(5).

4. Impala now seeks a second kick at the can. It asks this panel to overrule the original panel’s determination that Impala does not meet the eligibility criteria under subsections 99(1)1 and 99(1)2 of the *Act*; in particular, that (i) the permits and approvals received for construction and operation of the Impala Line do not constitute leave to construct under a predecessor of Part VI of the *Act*, and (ii) the application did not involve “reinforcement” of the Impala Line, as envisioned by the *Act*.[1]

5. The motion should be dismissed.

[1] Impala, Argument-in-Chief, para 23.

6. First, Impala has not met the threshold for a review. A Motion to Review is intended to be narrow procedural avenue that permits a review panel of the OEB to consider new facts that were unknown when the original panel of the OEB made its decision or when a decision includes a material and clearly identifiable error.[2] It is not an opportunity for disappointed parties to re-argue their case in hopes of finding a panel more inclined to their position. Yet that is precisely what Impala does here; its submissions simply repackage the same arguments that were made to and rejected by the Board in the underlying proceeding.

7. Impala's misuse of the review process is confirmed by the fact that it has also filed an appeal to the Divisional Court under section 33 of the Act raising the same jurisdictional issue it seeks to raise here. In so doing, Impala tacitly acknowledged that a motion to review and vary was not appropriate. It also makes the motion duplicative, procedurally inappropriate, and an abuse of the Board's process; precisely what the threshold question and Rule 43.01(f) in particular are intended to prevent.

8. Second, and in any event, the Decision is correct in law and well-supported by the record. At its core, it reflects the fact that, through s. 99 of the *Act*, the legislature defined the categories of individuals who are eligible to seek authority to expropriate. Parties like Impala with no demonstrated intention to construct a new transmission line, or to expand or reinforce an existing transmission line, and who are simply seeking to get a leg up on contractual counterparties, do not fall within those categories.

9. Third, and in the alternative, expropriation would not be in the public interest in this case. Impala seeks to advance its own private commercial interest, not that of the public.

10. Finally, as described further in these submissions, portions of Impala's argument go beyond or are at risk of going beyond the scope of the motion established by PO1 and should be disregarded to the extent they do so.

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[2] OEB, *Rules of Practice and Procedure*, Rule 42.01.

B. BACKGROUND

1. The Regulatory Framework

(a) Section 99 of the *Act*

11. Section 99 of the *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.[3]

12. 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.

13. 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 construction, expansion or reinforcement of an transmission line or interconnection; or (iii) if it obtained leave to

[3] OEB Act, s. 99.

construct under a predecessor to Part VI of the *Act*. The original panel of the OEB found that Impala meets none of these prerequisites.

(b) The Public Interest Test

14. If (and only if) an applicant has standing under section 99, the OEB will go on to consider whether expropriation would be in the "public interest".[4]

15. Whether or not an application for expropriation might otherwise be in the public interest is not relevant if the applicant lacks standing. To the extent the OEB is required to consider the question at all in the context of a particular application, the question under section 99(5) is whether the specific expropriation requested is in the public interest, not whether the underlying project itself is in the public interest.[5]

16. 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.[6]

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[4] OEB Act, s. 99(5).

[5] OEB, Filing Requirements for Electricity Transmission Applications, Chapter 4 – *Leave to Construct and Related Matters under Part VI of the Ontario Energy Board Act*, December 16, 2025 (the "**Filing Requirements**"), section 4.5.1.

[6] Filing Requirements, section 4.5.1.

2. The Transmission Line

17. The Impala Line is a privately owned, unlicensed 115 kV transmission line that was constructed in approximately 1996 to serve Impala's Lac des Iles mine (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.[7] The Mine is located approximately 130 kilometres by road northwest of Thunder Bay.[8]

18. The Impala Line is a line connection facility that conveys electricity solely from the provincial transmission grid to the Mine.[9] Impala is the sole user of the electricity conveyed by the transmission line. Impala has no plans to extend, expand, increase the capacity of, add conductors to, replace structures or otherwise reinforce the transmission line.[10] The Mine also has three large diesel power generators on site to provide power to essential services in the event of power outages.[11]

19. 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

20. 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

[7] Original Application, para 7.

[8] Original Application, para 1.

[9] North Star, Intervenor Evidence in EB-2025-0286, 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.

[10] EB-2025-0286, Impala Response to 1-North Star-1(d).

[11] EB-2025-0286, North Star, Intervenor Evidence, para 14.

private lands to construct and maintain the 115 kV transmission line for the Mine (the **"1996 Letter Agreement"**).[12]

21. The 1996 Letter Agreement[13] explicitly provides in section (i) that the easement was granted "for an easement term of 25 years such term subject to renewal upon the mutual consent of both parties". 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";

(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;

(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.

[12] EB-2025-0286, North Star, Intervenor Evidence, para 11.

[13] See EB-2025-0286, North Star, Intervenor Evidence, Exhibit A, for a copy of the 1996 Letter Agreement.

(b) The 1999 Transfers of Easement

22. 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).[14]

23. As explained by North Star in response to Staff-1(a) in EB-2025-0286, 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".

24. 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, and that the consideration for the easement would have been set accordingly.

[14] Original Application, Appendix 5, p. 2, s. 2.

(c) Expiry of the Easement

25. 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.[15] North Star thereby received Abitibi-Consolidated Inc.'s rights in connection with the Easement.

26. In December 2019, through an amalgamation of North American Palladium Ltd., Lac Des Iles Mines Ltd. and a numbered company, Impala likewise became the successor owner of the Impala Line and the associated easement rights, and obligations.[16]

27. The initial 25-year term under the Transfers of Easement expired on February 18, 2024. The parties have never mutually consented to renewal.[17] As such, Impala has been occupying North Star's lands without legal authority for more than two years.

(d) Failure to Renew the Easement

28. 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 and conduct itself in good faith.[18]

29. The parties have engaged in negotiations regarding the renewal of the easement. To date, the negotiations have not resulted in an agreement. As North Star confirmed in EB-2025-0286, 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.[19] Further, contrary to Impala's characterization that compensation has been the "only issue outstanding" or

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[15] EB-2025-0286, North Star, Intervenor Evidence, para 8.

[16] EB-2025-0286, Impala Response to OEB Staff-1(a).

[17] EB-2025-0286, Impala Response to North Star-2 (a) and (b).

[18] EB-2025-0286, North Star, Intervenor Evidence, para 17; North Star Response to Impala-6(d).

[19] EB-2025-0286, North Star Response to Impala-5(d).

"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.[20]

30. In correspondence dated September 11, 2025, counsel for North Star wrote to Impala's counsel confirming 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 (as discussed further below).[21]

31. 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.[22]

32. Impala responded on September 18, 2025, advising of its intention to file an expropriation application with the OEB.[23] 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 as a result of Impala's decision to pursue proceedings before the OEB instead of negotiating.[24]

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[20] EB-2025-0286, North Star, Intervenor Evidence, para 19.
[21] EB-2025-0286, North Star, Intervenor Evidence, Tab C.
[22] EB-2025-0286, North Star, Intervenor Evidence, Tab C.
[23] EB-2025-0286, Impala Response to 2-North Star-2(a).
[24] EB-2025-0286, North Star Response to OEB Staff-1(c).

4. Mine Closure

33. 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 palladium 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.[25]

34. Even Impala's most optimistic current projection contemplates commercial production ceasing in summer 2027—approximately 12 months from the date of these submissions.[26] Following cessation of commercial production, Impala will be required to conduct certain remediation works in accordance with its closure plan. Impala's closure plan asserts that

[25] EB-2025-0286, North Star, Intervenor Evidence, paras 22-26, and Exhibit D.

[26] EB-2025-0286, North Star, Intervenor Evidence, para 24.

an active close out phase would require two years following the cessation of commercial operations (i.e. from 2027 – 2029).[27]

35. 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.[28]

5. Original Panel's Decision

36. In the Decision, the original panel denied Impala's application to expropriate permanent easements on two parcels of North Star land. The central issue was whether Impala met the eligibility criteria to apply for authority to expropriate under section 99(1) of the *Act*.

37. With respect to section 99(1)1, Impala contended the permits that it obtained from the Ministry of Natural Resources around 1996 constituted leave under a predecessor to Part VI of the *Act*. The original panel rejected this argument, finding that (i) those permits were administrative in nature and did not amount to leave to construct an electricity transmission line, and (ii) the relevant predecessor regime was under the *Power Corporation Act*, with particular reference to section 28(2)(g)[29] thereunder, which applied exclusively to Ontario Hydro and was therefore never available to Impala.[30]

38. With respect to section 99(1)2, Impala argued that its intention to perform ongoing maintenance of the transmission line amounted to "reinforcement" of the line, and that it was exempt from the leave to construct requirement for such reinforcement under section

[27] EB-2025-0286, North Star Responses to OEB Staff-1(d).

[28] EB-2025-0286, Preamble and North Star Response to Impala-10.

[29] Section 28(2)(g) of the *Power Corporation Act* provided that the Lieutenant Governor in Council, on the recommendation of Ontario Hydro, could authorize Ontario Hydro to construct transmission lines and related facilities and to acquire lands for these purposes. Section 28(2)(g) related only to lines to be constructed by Ontario Hydro for the purposes of its transmission system, which served all customers in Ontario. See https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1376&context=rso

[30] Decision, pp. 4-7.

6.2(1)(e) of O. Reg. 161/99 (Definitions and Exemptions).[31] The original panel also rejected this argument, concluding that routine maintenance does not constitute reinforcement under the *Act*, which requires some manner of material upgrade such as an increase in transmission capacity.[32]

39. Having determined that Impala did not meet the eligibility criteria to apply for authority to expropriate under section 99(1)1 or section 99(1)2, the original panel dismissed the application without needing to address the remaining issues on the issues list, including whether the proposed expropriation would be in the public interest.[33]

C. SCOPE OF REVIEW

40. PO1 expressly limits the scope of this motion to two issues: (a) the "narrow" issue of whether the original panel erred in its interpretation of section 99(1) of the *Act* (the **"Jurisdictional Question"**); and, if applicable, (b) whether the proposed expropriation is in the public interest under section 99(5) of the *Act* (the **"Public Interest Question"**).[34]

41. Impala's submissions extend or are at risk of extending beyond this scope in at least two key respects:

   a. First, Impala's submissions regarding the alleged economic importance of the Mine and palladium are irrelevant to the Jurisdictional Question under section 99(1) of the *Act*. They are only relevant and should only be considered if Impala demonstrates that it is eligible to apply for authority to expropriate under section 99(1). Impala's attempts to use such considerations to inform the interpretation of section 99(1) conflate the eligibility question with the public interest analysis. The original panel correctly rejected this approach in the Decision.

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31 Decision, p. 4.

32 Decision, pp. 7-8.

33 Decision, p. 3.

34 PO1, p 2.

b. Second, Impala extensively references the negotiation history between Impala and North Star. While North Star strongly disagrees with Impala's characterization of those discussions, in any case, they do not inform whether Impala falls within the category of individuals that the legislature determined through s. 99(1) of the *Act* are eligible to seek authority to expropriate.

42. North Star urges the Board to confine its review to matters falling within the scope established in PO1 and disregard Impala's submissions exceeding that scope.

D. IMPALA IS RE-ARGUING ITS CASE

43. The motion should be dismissed without consideration of the Jurisdictional Question (and, by extension, the Public Interest Question).

44. It is a precondition to considering the Jurisdictional Question that the motion meet the threshold for a review under the Board's Rules. Impala has not met that precondition. Its submissions simply reargue the same questions that were raised and decided by the Decision, and which they have separately appealed to the Divisional Court.

45. Rule 43.01(f) provides that in assessing the threshold question of whether a motion raises relevant issues material enough to warrant a review of the decision or order on the merits, the review panel should consider:

> *where the grounds of the motion relate to a question of law or jurisdiction that is subject to appeal to the Divisional Court under section 33 of the OEB Act, whether the question of law or jurisdiction that is raised as a ground for the motion was raised in the proceeding to which the motion relates and was considered in that proceeding.*[35]

46. The Board has previously confirmed that Rule 43.01(f) exists to prevent parties from simply re-arguing questions of law or jurisdiction that were raised before the panel of

[35] OEB, *Rules of Practice and Procedure*, Rule 43.01(f).

Commissioners that made the decision or order that is the subject of the motion.[36] This is consistent with the plain language of Rule 42.01(a), which reflects that the purpose of the review process is to allow the Board to consider new facts that may have impacted its decision or to correct clear and material errors of law. It is not intended to provide a 'second kick at the can'.

47. The review panel elected not to consider the threshold question *separately* from the merits on the basis that, due to the narrowness of the Jurisdictional Question, it may be difficult to delineate issues relating to the threshold question from those related to the merits.[37] It did not relieve Impala of its burden to meet the threshold for a review of the motion on its merits.

48. The Jurisdictional Question Impala raises is the same question that was raised, considered and decided by the original panel in the Decision. Both parties made extensive submissions on the interpretation of section 99(1)1 and section 99(1)2 of the *Act* in EB-2025-0286, including with respect to the meaning of "predecessor of this Part" and "construct, expand or reinforce".[38] The original panel considered those submissions in detail, with the benefit of an extensive evidentiary record, and concluded that Impala is not eligible under the *Act* to seek expropriation authority.[39]

49. Impala has not pointed to any new issue or identifiable error in the original panel's interpretation of section 99(1). It simply asks this panel to substitute a new decision on the same record. It has adduced no new evidence or even arguments. Rather, where the Board rejected Impala's arguments, Impala simply repeats them with an assertion that holding otherwise constitutes an improper interpretation of the *Act*.

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[36] OEB, Letter re Adoption of Amendments to Rules 40-43 of the Rules of Practice and Procedure regarding Motions to Review and Minor Administrative Changes, EB-2021-0154, p. 2 (https://www.oeb.ca/sites/default/files/OEBltr-Updated-Rules-of-Practice-and-Procedure-20210730.pdf).

[37] PO1, p. 2.

[38] See EB-2025-0286, North Star, Submissions, Part D, Issue 1; Impala, Argument in Chief, Part C, Subsection ii; Impala, Reply Submission, Part B, Subsection (a).

[39] Decision, Section 3.1.

50. As noted, Impala has appealed the same Jurisdictional Question to the Divisional Court (Case File No. DC-26-00000521-0000). Rule 43.01(f) contemplates exactly that scenario. The Board should dismiss the motion and direct Impala to proceed with its appeal rather seeking to have the Board reconsider the matter.

E. THE BOARD INTERPRETED ITS JURISDICTION APPROPRIATELY

51. In any event, even if the Board determines it appropriate to consider the Jurisdictional Question, it should dismiss the motion. The Board's interpretation of sections 99(1)1 and 99(1)2 of the *Act* discloses no "material and clearly identifiable" error.

52. Impala does not meet the eligibility criteria under either section 99(1)1 or section 99(1)2 of the *Act*. Section 99(1) provides:

> *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 <u>or a predecessor of this Part</u>.*
>
> *2. Any person <u>who intends to construct, expand or reinforce an electricity transmission line</u> or an electricity distribution line or make an interconnection and who is exempted under this Act from the requirement to obtain leave.*
>
> (emphasis added)

1. Section 99(1)1 – Meaning of "a predecessor of this Part"

53. Impala argues that the Board erred by interpreting "a predecessor of this Part" as limited to the *Power Corporation Act* (***"PCA"***) and, by extension, to Ontario Hydro and its successors.[40] Impala contends that a "fair, large and liberal" interpretation should expand the ambit of section 99(1)1 to give the Board jurisdiction to grant expropriation authority

[40] Impala, Argument in Chief, paras 6, 25-29.

in respect of any transmission line that received any form of governmental authorization prior to the enactment of the *Act*.[41]

54. This argument is without merit.

55. First, the legislative text in section 99(1)1 refers to "leave under . . . a predecessor of *this Part*", not merely any prior permit or approval from any government agency. The reference to "this Part" refers to Part VI of the *Act*, which governs leave to construct, expropriation, and related matters. A "predecessor" of Part VI must therefore be an earlier legislative regime that served the same or an analogous function, namely, a regime that authorized or controlled the construction of electricity transmission lines. "Leave . . . under a predecessor of this Part" must therefore refer to leave to construct or equivalent authorization under an earlier legislative regime that served the same or an analogous function.

56. Second, the Board correctly identified the *PCA* as the most analogous predecessor regime. As the Board explained, under the *PCA*, "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)".[42] This was the closest, if not the only pre-1998 legislative regime that provided a function analogous to the granting of leave to construct electricity transmission facilities under Part VI of the *Act*.

57. Notably, the OEB made these findings after reviewing the extensive record and submissions put before it by North Star examining Ontario legislation pre-dating the *Act* which could potentially have governed approval of the need for and construction of electricity transmission lines. Impala failed to place this evidence before the OEB, which was not supportive of its case.

[41] Impala, Argument in Chief, paras 9-12, 26.
[42] Decision, p. 7.

58. Third, the permits obtained by Impala's predecessor from the Ministry of Natural Resources in or around 1996 were described by Impala as including a land use permit, work permits, and licences to harvest Crown forest resources.[43] These are not the equivalent of the legislative authorization to construct a transmission line as provided for under Part VI of the *Act*. Rather, as the Board found, they are administrative permits of limited scope that authorized temporary occupancy or specific activities on Crown lands. They did not authorize the need for or construction of a transmission line pursuant to any legislative scheme.[44]

59. In making this finding, the Board noted that Impala had adduced "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*."[45] This finding of fact is entitled to deference. Impala has adduced no further evidence on this motion that could justify overturning the Board's prior finding.

60. In any case, the permits obtained by Impala's predecessor were not issued under legislation or legislative provisions that were in any way related to the establishment of, or that could be seen as a predecessor to the *Act*, or to section 99 of the *Act* specifically.

61. Section 99 has its roots in section 98 of the *Energy Competition Act, 1998*, also known as Bill 35, which fundamentally restructured Ontario's electricity sector.[46] Among other matters, Bill 35 repealed the old *Ontario Energy Board Act*, repealed the *Power Corporation Act*, and enacted the *Ontario Energy Board Act, 1998*, inclusive of the jurisdiction to grant leave to construct for electricity transmission lines (initially under section 91 and now under section 92) and to grant authority to expropriate (initially under

[43] EB-2025-0286, Impala, Argument in Chief, para 12.
[44] Decision, pp. 6-7.
[45] Decision, p. 7.
[46] See https://www.ola.org/sites/default/files/node-files/bill/document/pdf/1998/1998-10/bill---text-36-2-en-b035.pdf

section 98 and now under section 99).[47] As such, unlike with any of the permits obtained by Impala's predecessor, there is a direct line from Part VI of the *Act* to the LGIC's authority under the *PCA* to permit the construction of transmission lines and related expropriation by Ontario Hydro.

62. Impala argues that the Board's interpretation is inconsistent with the direction in Section 64 of the *Legislation Act, 2006* to give statutory provisions such fair, large and liberal interpretation as best ensures the attainment of its objects.[48] The Board's Decision is consistent with Section 64. That provision does not assist Impala.

63. Section 64 directs legislation to be interpreted in a manner that "best ensures the attainment of its objects." This requires courts and tribunals like the Board to interpret the relevant legislation, including to determine what its objects are. That, in turn, requires the Board to engage in an exercise of statutory interpretation.

64. The proper approach to statutory interpretation is well-established. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[49]

65. Section 64 of the *Legislation Act, 2006* does not permit Impala to avoid the express language of Section 99(1) of the *Act*. As the Supreme Court has recently confirmed, the text of the provision remains the anchor of the interpretive exercise:

> However, just as the text must be considered in light of the context and object, **the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretive exercise. The text specifies, among other things, the means chosen by the legislature to achieve its purposes. These means**

[47] Ibid (See Schedule D of Bill 35 for repeals and Schedule B for the *Ontario Energy Board Act, 1998)*.

[48] Impala, Argument in Chief, paras 25-27.

[49] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para 23.

> **"may disclose qualifications to primary purposes, and this is why the text remains the focus of interpretation** […] In other words, they may "**tell an interpreter just how far a legislature wanted to go in achieving some more abstract goal**" (p. 927). As this Court recently noted, an interpreter must "interpret the 'text through which the legislature seeks to achieve [its] objective', because 'the goal of the interpretative exercise is to find harmony between the words of the statute and the intended objective ...[50] (emphasis added)

66. Impala invites the review panel to adopt an interpretation of Section 99(1) that would ignore the fact that the Legislature did not make *anyone* with permits under past legislation eligible to apply for leave under Section 99(1), but only "a predecessor of *this Part*".[51] That was the specific language that the Legislature chose. The Decision correctly anchored its interpretation in that language and rightly concluded that Impala is ineligible to apply for authority to expropriate in this case. It would be an error for the review panel to adopt Impala's interpretation.

67. The Decision is consistent with the legislative history of the *Act*. Prior to the *Act* being enacted in 1998, the Board had minimal oversight of the electricity sector and there was no formalized process for private actors to receive authorizations to construct private transmission lines that are not used in serving the public. The only legislative scheme governing leave to construct was the *PCA*, which was available only to Ontario Hydro.[52] Section 99(1)1 is therefore properly understood by the Board as a transitional provision

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[50] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para 24.

[51] Impala, Argument in Chief, para 6.

[52] Bill 35 also amended the *Expropriations Act*, including by removing references to the *Power Corporation Act* and adding references to the Ontario Energy Board's new authority to grant expropriation. Notably, the version that existed immediately prior to Bill 35, the *Expropriations Act, RSO 1990*, stated in section 5(5) that "Where an expropriation is made under the Power Corporation Act, the approving authority shall be the Minister of Energy", and in section 9(5) that "Where a limited estate, right or interest in land is being taken under the Power Corporation Act for an electrical transmission or distribution line carried on single poles, Ontario Hydro may, before registering a plan . . ." (emphasis added). These amendments align with the overall interpretation asserted by North Star and accepted by the Original Panel in the underlying proceeding. Moreover, the reference only to Ontario Hydro in section 9(5) appears to confirm that the PCA did not authorize the Minister of Energy to grant expropriation for a transmission line to any person other than to Ontario Hydro, consistent with the Original Panel's findings.

designed to ensure that successors to Ontario Hydro that had obtained leave to construct under the *PCA*, such as Hydro One, could request expropriation authority from the Board under the new regime for projects whose construction was previously approved under the *PCA*.[53]

68. Impala argues that this interpretation leads to “absurd consequences” because it excludes private transmission lines built before 1998 from seeking Board authority to expropriate.[54] There is nothing absurd about this result. Section 99 grants the extraordinary power to the Board of authorizing expropriation – the compulsory taking of private property against a landowner’s wishes. Given the extraordinary nature of this power, the *Act* appropriately limits the circumstances in which it is available. The Legislature chose the specific eligibility criteria. That this is inconvenient for Impala does not render it absurd.

69. Moreover, the consequence Impala identifies is not absurd at all. Private non-licensed transmission line owners whose easements or other land rights have expired or are disputed have the same remedy available to them as all private parties: commercial negotiation and, if necessary, proceedings in the civil courts. The fact that expropriation is not available under the *Act* simply means that Impala is in the position most parties are in when they want rights over another party’s property. The Board’s power to permit expropriation in certain circumstances is intended to be the exception (in the sense that it is limited to the circumstances defined by the Legislature), not the rule.

70. This highlights the fundamental reality of this proceeding. Through its Original Application (and now motion for review), Impala is seeking to use the Board to circumvent its contractual obligations so it can achieve a better outcome than if it had to strike a deal on commercially negotiated terms.

[53] Decision, p. 7.
[54] Impala, Argument in Chief, paras 6, 8, 35.

71. Notably, the compensation regime under the *Expropriations Act* (which would apply pursuant to section 100 of the *Act* if Impala were granted authorization by the Board to expropriate) needs only to reflect (i) the appraised market value of the takings, (ii) disturbance damages (i.e. appraisal fees, operational impacts), (iii) injurious affection (the reduction in the value of the remaining land), and (iv) relocation costs, if applicable.[55] As a practical matter, this militates in favour of an amount substantially lower than parties negotiating at arms length would yield.

72. The Board should not permit itself to be used in this manner, and should not diminish section 99 of the *Act* by interpreting it in the self-serving manner Impala seeks.

2. Section 99(1)2 – Meaning of "Reinforce"

73. Impala argues that the Board erred in finding that Impala's intention to "indefinitely maintain" the Impala Line does not constitute an intention to "reinforce" the line for the purposes of section 99(1)2.[56]

74. Impala's argument reveals no clearly identifiable and material error. The plain language of section 99(1)2 requires an intention to "construct, expand or reinforce" a transmission line. This intention is a critical element, which the original panel was keenly aware of,[57] because of the interplay between sections 99 and 92 of the *Act*. Section 92(1) provides that no person may construct, expand or reinforce an electricity transmission line without an order granting leave to construct from the Board. Where a person obtains leave to construct under section 92(1), they may then apply for authority to expropriate under section 99(1)1. Where a person falls within the ambit of section 92 because they intend to construct, expand or reinforce a transmission line, but they are exempt from the need for leave to construct because they are relocating or reconstructing an existing line but do not require additional land or land rights pursuant to section 92(2), or on the basis of

[55] See in particular section 13 of the *Expropriations Act.*

[56] Impala, Argument in Chief, para 7.

[57] Decision, pp. 7-9.

exemptions set out in O. Reg. 161/99 (Definitions and Exemptions), then the person may apply for authority to expropriate under section 99(1)2. Where a person is simply planning to perform ongoing, normal course maintenance activities on their transmission line, they do not engage section 92 or the exemptions thereunder, and therefore do not have access to section 99.

75. “Reinforce” connotes strengthening, upgrading, or materially enhancing the capacity or capability of the line – such as by replacing conductors with higher capacity conductors, replacing structures with larger structures to support higher capacity conductors, adding an additional circuit on an existing line or upgrading a transformer to a larger transformer at an existing substation - not simply maintaining it in its current state. While not a defined term in the *Act*, its meaning is evident from the plain meaning of the word,[58] as well as from section 92(2) of the *Act* which suggests that reinforcement goes beyond like-for-like reconstruction or relocation. Also helpful is the Transmission System Code, which indicates in section 3.0.15 that a reinforcement is something that needs to be constructed and that can result in increased capacity (unlike maintenance work), and in section 3.B1 that a transmitter has distinct obligations to maintain the reliability and integrity of its system on the one hand, and to reinforce or expand its system as required to meet load growth on the other.[59]

76. Put simply, if the Legislature intended run-of-the-mill maintenance on an existing, private transmission line to make a party eligible to apply for expropriation, it would have said so.

77. The Board considered the evidence and found that:

[58] See https://www.merriam-webster.com/dictionary/reinforce.

[59] OEB, *Transmission System Code*, March 31, 2025 (https://www.oeb.ca/sites/default/files/uploads/documents/regulatorycodes/2025-04/Transmission_System_Code_20250331.pdf)

a. the types of work Impala referred to are “ordinary maintenance of the type that all transmitters routinely conduct on their transmission lines”;[60]

b. reinforcement should have the same meaning under section 99(1) as it does elsewhere in the *Act*, which requires leave to construct for transmission line reinforcements but notably the type of maintenance work contemplated by Impala “does not trigger the requirement to obtain leave to construct”, and if it did the OEB would be inundated with leave to construct applications for every transmission line in Ontario;[61]

c. the Transmission System Code distinguishes between maintenance and reinforcement, suggesting they are not synonymous;[62] and

d. finding that “some manner of upgrade is required to the transmission line, such as an increase in capacity, to constitute reinforcement.”[63]

78. These findings were amply supported by the evidence and consistent with the statutory language, as well as with the common understanding and usage of the term in the electricity industry and before the Board. Impala has identified no error. It simply disagrees with the weight given to the evidence and the interpretation adopted. That is not a basis for review or variance.

79. The Board’s Decision that Impala was not eligible and had not demonstrated an intention to “reinforce” the line was grounded in the specific factual record before it. Notably, when asked directly whether it plans to extend, expand or reinforce the Impala Line, Impala responded only that it “continues to maintain the integrity of the Impala Line by replacing any damaged or worn aspects of the electrical infrastructure”.[64]

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[60] Decision, p. 9.
[61] Decision, p. 9.
[62] Decision, p. 9.
[63] Decision, p. 9.
[64] EB-2025-0286, Impala Response to North Star Interrogatory 1(d).

80. This response should be viewed against the backdrop to the application. Impala has never evinced any intention to do any work on the line that could reasonably be viewed as expanding or reinforcing it. Impala adduced no evidence of any plans, engineering reports, or commercial imperatives requiring the line to be expanded or reinforced. Rather, Impala's application was (and remains) an attempt to fit itself within the requirements of s. 99(1) in order to end-run commercial negotiations with North Star. It is not based upon a *bona fide* need to perform work on the line that it could not otherwise perform without engaging the need for leave under section 92 of the *Act*.

81. Impala's argument that the Board's interpretation creates an "absurd consequence" by requiring Impala to propose an "unnecessary" upgrade merely to become eligible for expropriation is ill-conceived.[65] The eligibility criteria in section 99(1)2 are meant to apply to persons who genuinely intend to construct, expand, or reinforce a transmission line to meet an established need. There is nothing absurd about the Legislature's decision to limit the category of individuals eligible to apply for expropriation under section 99(1) accordingly. The ability to circumvent an individual's property rights through compelled expropriation is intended to be the exception, not the rule.

82. Impala's argument reveals the true nature of its application: it seeks to use section 99 not for a necessary planned construction, expansion, or reinforcement project, but to cure deficient land rights for existing infrastructure that it wishes to continue operating in its current state. That is not section 99's purpose.[66]

F. THE EASEMENT SHOULD BE RENEWED THROUGH NEGOTIATION, NOT COMPELLED EXPROPRIATION

83. Impala characterizes the Decision as creating a "non-market driven leverage opportunity for landowners" and implies that North Star's conduct in negotiating the terms of an easement renewal is somehow improper.[67] Impala made the same arguments in its reply

[65] Impala, Argument in Chief, para 35.
[66] EB-2025-0286, North Star, Intervenor Argument, March 5, 2026, para 58.
[67] Impala, Argument in Chief, para 31.

submission in the original proceeding, in which it described North Star's negotiating position as "extortive" and aimed at "circumvent[ing]" a "contractual bargain."[68]

84. This characterization ignores the facts and evidence. As explained in Part B, above, the record in EB-2025-0286 (and here) establishes the following:

a. The 1996 Letter Agreement expressly provided for a 25-year easement term "subject to renewal upon the mutual consent of both parties". Impala (through its predecessor) knowingly accepted a time-limited easement and the risk that it would need to negotiate a renewal should the transmission line be needed beyond the 25-year term.

b. Impala – a sophisticated multi-national corporation – knew or ought to have known when acquiring the Mine together with the transmission line and the underlying easement rights from its predecessor in 2019, that the easement rights were time-limited in nature. No doubt this would (or should) have been reflected in the price Impala paid. In any case, on completing the acquisition Impala assumed the obligation and commercial risk of having to negotiate an extension or renewal of the easement in circumstances where its options were limited, particularly once it confirmed the need for power at the Mine beyond the expiry date of the easement. At no point, from the time it acquired the transmission line until the expiry of the easement did Impala attempt to renew or extend the term of the easement.

c. The easement expired on February 18, 2024. North Star has sought to negotiate a renewal or extension in good faith. Notwithstanding its legal rights, it has never interfered with Impala's access to or use of the transmission line. Impala continues to operate the Impala Line across North Star's lands without a valid easement.

[68] EB-2025-0286, Impala, Reply Submissions, March 16, 2026, paras 32-34.

d. North Star has been willing to negotiate and has made concrete offers, including a temporary easement extension to December 2029 - a term that would accommodate Impala's stated plans for Mine closure and active close-out. The parties disagree not only on price, but also on duration, decommissioning obligations, and other material terms.

85. It is entirely proper for a landowner, upon the expiry of a time-limited easement, to negotiate the terms of any renewal including the price. That is not "leverage" in any pejorative sense; it is ordinary commercial negotiation. The value of an easement to the grantee is a legitimate factor in determining price, as it is in any arm's-length transaction. Impala's characterization of North Star's conduct amounts to a complaint that North Star will not grant a new easement at the price Impala wishes to pay.

86. Impala freely accepted the time-limited arrangement that its predecessor willingly entered into, benefited from it for its full term, and now – after allowing the easement to expire – must negotiate a renewal on terms acceptable to both parties, or seek alternative arrangements. It is not the role of the OEB to relieve Impala of the commercial consequences of the bargain it made.

87. To the extent Impala's submissions on this point are intended to support its public interest argument, they should be rejected. A disagreement over the price of a commercial transaction between two sophisticated private parties is not a public interest matter that warrants the exercise of the extraordinary power of expropriation.

G. EXPROPRIATION WOULD SERVE NO *PUBLIC* INTEREST

88. Impala is not eligible to apply for expropriation under Section 99(1). As such, there is no need for the Board to consider questions about the public interest under section 99(5). It would be an error to do so. It is apparent on the face of Section 99(1) that the Board should only consider whether a proposed expropriation is in the public interest once an applicant has established that it has standing to seek such relief in the first place.

89. In the alternative, and in any event, the proposed expropriation is not in the public interest. The Impala Line is a privately owned, unlicensed line connection facility that serves only one customer – Impala – at one site. It is not part of any licensed utility transmission system and is not used (and is not authorized to be used) to serve the public.

90. Impala has announced that it plans to cease commercial operations at the Mine in summer 2027, with a two-year active close-out period thereafter. The evidence does not support a finding that the public interest requires a *permanent* easement, or indeed any expropriation at all, in these circumstances.

91. The interests at stake in this proceeding are private and commercial in nature. Impala seeks to advance its own business interests by securing the necessary land rights for its existing transmission line at a lower cost through the extraordinary mechanism of expropriation, and the compensation provisions of the *Expropriations Act* that would then apply. These are not the kind of "public" interests that justify the compulsory taking of private property.

92. Impala's reference to recent Ontario legislation promoting economic growth and critical minerals is a red herring. Those legislative objectives do not transform a private commercial dispute into a matter of public interest. The question under section 99(5) is whether the *specific expropriation requested* is in the public interest, not whether the mining industry in general is important to Ontario's economy.

93. Similarly, the review panel should give no weight to Impala's submissions regarding the OEB's statutory objectives.[69] Impala suggests that the Board should authorize expropriation because the Mine contributes to Ontario's economy, and one of the OEB's statutory objectives is to regulate the electricity sector in a manner that supports economic growth. Impala's submission in this respect is flawed because the Board's statutory objectives in section 1(1) of the *Act* are intended only to guide the Board in exercising the jurisdiction that it is given under the *Act* and other legislation. Section 1(1)

[69] Impala, Argument in Chief, p. 16.

does not expand the Board's jurisdiction or override limitations on the Board's jurisdiction that are set out in the *Act*. As such, the Board may not grant authority to expropriate to support economic growth where the *Act* says it has no jurisdiction to do so.

94. Impala will not publicly commit to operate the Mine beyond next year, regardless of whether the expropriation is granted. As against that reality, expropriation would not advance the legislative objectives Impala refers to in any event.

95. Finally, Impala has never been prevented from operating the Impala Line. North Star has not interfered with Impala's access or use of the transmission line at any time despite the easement having expired over two years ago. The parties' dispute concerns the terms of a future easement, which is a matter properly resolved through commercial negotiation or, failing that, through civil proceedings. Expropriation is not warranted in the circumstances.

H. CONCLUSION

96. North Star respectfully submits that Impala's motion to review and vary the Decision should be dismissed.

All of which is respectfully submitted this 29th day of July 2026.

NORTH STAR FORESTRY LTD.
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