



BY EMAIL AND RESS

August 6, 2026

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Ritchie Murray
Acting Registrar
Ontario Energy Board
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Dear Ritchie Murray,

RE: EB-2026-0178: Reply Argument of Impala Canada Ltd. in its Motion to Review and Vary the OEB's Decision and Order in EB-2025-0286

We are legal counsel to Impala Canada Ltd. ("**Impala**"), the moving party in the subject Motion to Review and Vary ("**Motion**") the Ontario Energy Board's ("**OEB**") Decision and Order, dated May 21, 2026, dismissing Impala's application for authority to expropriate interests in two parcels of land in the District of Thunder Bay in Ontario.

On July 13, 2026, the OEB issued its Notice of Hearing and Procedural Order No. 1 in connection with the Motion, and on July 27, 2026, the OEB directed Impala to serve and file a reply argument by August 6, 2026. Enclosed is Impala's reply argument.

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 Application EB-2025-0286 by Impala Canada Ltd. 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 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.

REPLY ARGUMENT OF IMPALA CANADA LTD.

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A. OVERVIEW

1. Pursuant to Procedural Order No. 1 (the “**Procedural Order**”) issued by the Ontario Energy Board (“**OEB**”) in this proceeding, and further to the OEB’s direction on July 27, 2026, these are the reply submissions of Impala Canada Ltd. (“**Impala**”) in regards to Impala’s Motion to Review and Vary (“**Motion**”) the OEB’s Decision and Order, dated May 21, 2026 in EB-2025-0286 (the “**Decision**”).
2. The Motion concerns the scope of the OEB’s jurisdiction to grant authority to expropriate land interests under section 99 of the *OEB Act* to owners of transmission infrastructure that was constructed prior to the enactment of the existing regulatory framework for the construction of private transmission lines under the *OEB Act*.
3. On July 20, 2026, Impala filed its argument in chief in support of its Motion with the OEB (“**Impala’s Submissions**”).¹ On July 29, 2026, North Star Forestry Ltd. (“**North Star**”) filed its written argument opposing Impala’s Motion (“**North Star’s Submissions**”).²
4. This is Impala’s reply (“**Reply**”) to North Star’s Submissions.
5. **North Star’s Submissions endorse an unduly narrow interpretation of the OEB’s jurisdiction** under subsection 99(1) that fails to consider the exact text of the provision, the OEB’s statutory objectives, and the legislature’s intent when enacting the *OEB Act* to bring all electrical infrastructure under the OEB’s jurisdiction.
6. **North Star’s Submissions also takes an unduly narrow approach to assessing the merits of Impala’s Submissions under the public interest framework**, further to subsection 99(5) of the *OEB Act*. North Star’s Submissions ignore the connection between the continued operation of the Impala Line and its critical role in supporting environmental and safety systems for the Lac Des Iles Mine (“**LDI Mine**”), as well the statutory objectives of the OEB to regulate the electricity sector in a manner that supports economic growth, consistent with the policies of the Government of Ontario.³

¹ Argument in Chief of Impala Canada Ltd. in EB-2026-0178, dated July 20, 2026 [**Impala Submissions**].

² Written Submissions of North Star Forestry Ltd. in EB-2026-0178, dated July 29, 2026 [**North Star Submissions**].

³ *OEB Act*, s 1(1)2.1.

7. **Finally, North Star's Submissions raise various issues that are clearly outside the scope of the Procedural Order**, including but not limited to submissions related to the threshold test, and issues emerging as a result of North Star's mischaracterization of Impala's Submissions.

B. REPLY SUBMISSIONS

8. Where Impala does not specifically address North Star's Submissions in this Reply, Impala relies on its Submissions on this Motion to address those submissions.

1. *The OEB Has Jurisdiction Under Section 99(1)*

9. Impala disagrees with North Star that the text of subsection 99(1) of the *OEB Act* anchors an interpretation that narrowly construes the scope of the OEB's jurisdiction to only pertain to historical infrastructure authorized under the *Power Corporations Act* ("**PCA**").⁴ At the time the *OEB Act* was enacted, the *PCA* was the only statute with a formal authorization process for transmission lines in Ontario. The decision not to reference the *PCA* in subsection 99(1) is a clear indication of the legislature's intent to bring *all* electrical infrastructure within the purview of the OEB, including to facilitate access to the remedial provisions under section 99.
10. Impala is subject to the OEB's licensing framework through its electricity wholesalers license, and the Impala Line is subject to IESO-controlled grid connections. Taken as a whole, these are all aspects underlying the objective of safe and reliable electricity transmission operations grounded by the *OEB Act*. North Star's Submissions continue an overly narrow approach at paragraph 93 where it argues that the OEB's objectives are irrelevant to establishing the OEB's jurisdiction under section 99(1).⁵ However, the objectives must contextualize the OEB's jurisdiction under subsection 99(1).⁶ The text of subsection 99(1) deserves a large, liberal and fair interpretation that is consistent with the OEB's objectives to allow Impala to attain the remedial and beneficial objects of the

⁴ North Star Submissions at para 66, PDF p 21.

⁵ North Star Submissions at para 93, PDF pp 29-30.

⁶ See Impala Submissions at para 26: *The preferred approach to statutory interpretation formulated by Elmer Driedger requires words to be read in their entire context, and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention of the legislature [emphasis added]*.

provision that are otherwise available to other transmission proponents subject to the OEB's regulatory regime.

11. The argument by North Star at paragraph 59 of North Star's Submissions that the OEB's findings related to the nature of the authorizations for the Impala Line should be afforded deference misses the point. While the authorizations themselves were not before the OEB, the Impala Line predates the current legislative scheme. As a result, the nature of the authorizations that had been obtained prior to the current legislative scheme are not relevant to the outcome.
12. Impala disagrees with North Star's allegation that there are no absurd and inefficient consequences that flow from the Decision.
13. While there may be alternate avenues to secure land interests, including a commercially negotiated agreement, in this case there is no alternative that provides certainty and reliability. The requested expropriation is the only approach to securing land interests for the Impala Line that ensures reliable, safe and environmentally-sound electricity supply to the LDI Mine.
14. Under the current OEB regulatory regime, proponents of new transmission lines that are exempt from the leave to construct requirement have recourse to expropriation relief under section 99 of the *OEB Act* and have the benefit of certainty and reliable and safe electricity supply. If the OEB and North Star's interpretation were correct, existing transmission lines that did not receive leave to construct under the *PCA* would have no benefits and would be subject to uncertainty caused by, for example, unreasonable monetary demands of affected landowners. An overly narrow interpretation of this provision has the unintended consequence of creating a separate class of historic transmission lines that are prohibited from accessing relief available to similarly positioned proponents.
15. The distinct category of transmission lines created by the OEB Decision further has the unintended result of creating a non-market driven leverage opportunity for landowners. North Star alleges that pointing to this result is a suggestion that North Star has acted improperly.⁷ In stating a leverage opportunity exists, Impala is stating the obvious. The

⁷ North Star Submissions at para 83, PDF pp 26-27.

OEB Decision creates a result that is out of line with the principle that the legislature does not intend to produce absurd consequences. Moreover, the OEB's objectives to promote economic efficiency and cost effectiveness in the transmission of electricity are diluted by the Decision.⁸

2. *The OEB Has Jurisdiction Under Section 99(1)2*

16. In response to North Star's Submissions on the OEB's jurisdiction under subsection 99(1)2, Impala relies on its Submissions on this Motion at paragraphs 34 to 36.

3. *The Proposed Expropriation is in the Public Interest*

(a) The OEB's Statutory Objectives

17. North Star alleges that Impala's Submissions only speak to how mining generally advances the OEB's objectives under the public interest test, rather than the specific expropriation requested for the Impala Line.⁹ As outlined in Impala's Submissions, the public interest test requires the OEB to consider its statutory objectives.¹⁰ One of those objectives is economic growth¹¹ consistent with the policies of the Government of Ontario.¹²
18. As it stands, the OEB's Decision has not considered whether the requested expropriation is in the public interest. Had it undertaken the public interest analysis under section 99(5), the OEB would have considered how the requested expropriation is aligned with the OEB's statutory objectives, which include the promotion of economic growth consistent with government policy. A consequence of the Decision and failure to consider the broader public interest is uncertainty regarding the continued electricity supply by the Impala Line and the LDI Mine's continued operation. An OEB Decision that leads to

⁸ *OEB Act*, s 1(1)2.

⁹ North Star Submissions at para 92, PDF p 29.

¹⁰ Impala's Submissions at para 38, PDF p 15.

¹¹ *OEB Act*, s 1(1)2.1.

¹² The Government of Ontario's policies touch on the promotion of critical minerals and are reflected in the preambular language of the *Protect Ontario By Unleashing Our Economy Act, 2025*, SO 2025, c 4: "The Government of Ontario is: ... Unlocking the potential of Ontario's critical minerals by streamlining approval processes for mining and critical infrastructure projects to achieve outcomes that fuel our economy while also creating jobs and **protecting the strategic national mineral supply chain** – all for the benefit of the people of Ontario and Canada" [emphasis added].

premature mine closure would not be aligned with government policy promoting economic growth and would be contrary to the public interest.

(b) “Broad Public Interest” Factors

19. At paragraph 89 of North Star’s Submissions, North Star argues that expropriation for the Impala Line cannot be in the public interest because the Impala Line “is a privately owned, unlicensed line connection facility”. As shown in the OEB’s Decision and Order in EB-2006-0352, discussed at paragraphs 46 and 47 of Impala’s Submissions, the public interest in securing a reliable supply of power to an industrial site can outweigh the private interests of landowners affected by easements sought.¹³ These principles are applicable to the benefits attained by the Impala Line by providing critical power for the safe and environmentally sound operation of the LDI Mine, which supports hundreds of jobs and provides value to Ontario’s economy.

There is need for power to the LDI Mine

20. North Star alleges that the LDI Mine is scheduled for closure to substantiate its position that the proposed expropriation is not in the public interest.¹⁴ Impala reiterates that there is currently no definitive closure date for the LDI Mine as mining operations are largely dependent on global palladium prices.

Expropriation is the only available option

21. Contrary to North Star’s suggestion at paragraph 86, Impala should not be excluded from accessing relief under section 99 of the *OEB Act* strictly on the basis of being able to negotiate easement renewal terms with North Star. As both parties outlined in their respective submissions, there is clear disagreement between the parties on the key terms of the easement renewal. Impala requires certainty for the continued operation of the Impala Line and seeks expropriation authority from the OEB as securing land interests directly from North Star has proven to be unproductive. It is not in the public interest for

¹³ EB-2006-0352, OEB Decision and Order, dated July 19, 2007, PDF p 16.

¹⁴ North Star Submissions at paras 33-35, 94, PDF pp 12-13.

North Star to leverage the OEB Decision to substantiate an exorbitant price for a land interest for existing critical infrastructure, regardless of if it being privately owned.¹⁵

4. *Issues Outside the Scope of the Procedural Order*

22. In its Submissions, North Star raised various issues that are outside the scope of the Motion as set out in the Procedural Order, including but not limited to submissions related to the threshold test, and issues emerging as a result of North Star's mischaracterization of Impala's Submissions. The following sections detail Impala's Reply to the same.

(a) Threshold Test

23. North Star's submissions on the threshold test¹⁶ are beyond the scope of the Procedural Order as the OEB has already addressed the issue. The Procedural Order acknowledges the difficulty in separating the issue of the threshold question from the merits of Impala's Motion and determined to proceed to only hear submissions on the merits:

The OEB has determined that it will not hear the threshold question and will proceed directly to consideration of the merits.

Under Rule 43 of the OEB's *Rules of Practice and Procedure*, the OEB **may** consider, with or without a hearing, a threshold question of whether the motion raises relevant issues material enough to warrant a review on the merits.

This review raises a narrow issue related to jurisdiction. **It may be difficult under these circumstances to delineate questions that are related to the threshold question from those related to the merits.**¹⁷

[emphasis added]

¹⁵ North Star Submissions at para 87, PDF p 28.

¹⁶ See North Star Submissions starting at para 43, PDF p 15.

¹⁷ Procedural Order, PDF pp 1-2.

24. Nevertheless, and contrary to submissions from North Star,¹⁸ Impala's Submissions clearly outline identifiable errors in the OEB Decision that speak to both the threshold question and the merits of this Motion, including the OEB's narrow construction of subsection 99(1) and failing to grapple with Impala's submissions on the absurd and inefficient consequences that result from the same.¹⁹

(b) Mischaracterization of Impala's Submissions

25. At paragraph 41(a) of North Star's Submissions, North Star alleges that Impala submitted arguments on the economic importance of the LDI Mine and palladium in relation to the OEB's jurisdiction under subsection 99(1). This is a mischaracterization of Impala's Submissions. Impala did not advance those arguments in its substantive submissions on subsection 99(1). Rather, Impala properly advanced those arguments in the context of the public interest analysis under subsection 99(5), which submissions were invited by the OEB.
26. Further, at paragraph 41(b) of North Star's Submissions, North Star alleges that Impala "extensively references" the negotiation history between the parties. This is not accurate. While Impala's submissions on this Motion reference the negotiations to provide context to Impala's Application, it is not accurate to say that Impala "extensively references" those discussions, nor does Impala advance arguments that those negotiations should be determinative of any of the issues before the OEB as outlined in the Procedural Order.
27. It is improper for North Star to suggest that Impala is advancing arguments that are outside the scope of the Procedural Order without making specific references to Impala's submissions that are allegedly offside the OEB's direction. Moreover, and at the same, North Star makes substantive arguments on the purported commercial dispute between the parties – this matter is clearly outside the scope of the Procedural Order. Despite North Star's attempt to put these issues before the OEB, this Motion is not the proper forum to address North Star's apparent dissatisfaction with the statutory process Impala has elected to use to protect the continued operation of the Impala Line.

¹⁸ North Star Submissions at para 46, PDF pp 15-16.

¹⁹ Impala's Submissions at paras 5-9, PDF pp 5-6.

28. In a similar vein, North Star's suggestion that Impala advancing parallel review and appeal processes amounts to an abuse of process²⁰ is unfounded. Impala has not acted improperly by availing itself to statutory rights of appeal and review mechanisms as the *OEB Rules of Practice and Procedure*²¹ do not restrict Impala's appeal rights under section 33 of the *OEB Act*,²² nor does section 33 restrict Impala's ability to file this Motion.²³ It is not an abuse of process to exercise available appeal rights in parallel to reconsideration processes when there are no restrictions on the same, particularly when the outcome of this Motion may render the appeal to the Divisional Court moot.²⁴

C. CONCLUSION

29. In consideration of the foregoing and Impala's Submissions on this Motion, Impala requests that this Motion be granted, that the OEB vary the Decision to find that the OEB has jurisdiction to find Impala eligible for expropriation under subsection 99(1) of the *OEB Act*, and that the OEB vary the Decision to find that the expropriation requested is in the public interest and approve Impala's application to expropriate land interests for the continued operation of the Impala Line.

August 6, 2026

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²⁰ See North Star Submissions at para 7, PDF p 4.

²¹ Ontario Energy Board, "Rules of Practice and Procedure" (last revised November 13, 2025), online: [link](#), Part VII, PDF pp 34-36.

²² Ontario Energy Board, "Rules of Practice and Procedure" (last revised November 13, 2025), online: [link](#), Part VII, PDF pp 34-36.

²³ *Taylor v Aviva Canada Inc.*, 2018 ONSC 4472 at paras 16-18.

²⁴ *Taylor v Aviva Canada Inc.*, 2018 ONSC 4472 at para 20.

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AND TO: All Intervenors in EB-2026-0178