

DECISION AND ORDER

EB-2019-0007

Imperial Oil Limited

Leave to Construct Waterdown to Finch Project

BEFORE: **Emad Elsayed**
 Presiding Member

Robert Dodds
 Vice Chair and Member

Michael Janigan
 Member

March 12, 2020

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1 INTRODUCTION AND SUMMARY

Imperial Oil Limited (Imperial Oil) applied under section 90(1) of the *Ontario Energy Board Act, 1998* (OEB Act) for leave to construct (LTC) 63 kilometers of 12-inch diameter pipeline for transportation of refined petroleum products from its facility in the City of Hamilton to its facility in the City of Toronto (Project).

A map of the general route for the Project is included in Schedule A.

Imperial Oil also applied under section 97 of the OEB Act for approval of the forms of easement agreements related to the construction of the Project.

The Project will replace an existing pipeline constructed in the mid -1950's. The existing pipeline from Waterdown to Finch is a segment of Imperial Oil's Sarnia Products Pipeline (SPPL) that transports fuel products manufactured in Sarnia to the Greater Toronto Area. The existing pipeline will be decommissioned in place. Imperial Oil states that the Project will provide continuity of service and will maintain system integrity.

The Project is located in the City of Hamilton, the City of Burlington, the Town of Milton, the Town of Oakville, the City of Mississauga and the City of Toronto. The City of Burlington, the Town of Milton and the Town of Oakville are in the Region of Halton. The City of Mississauga is in the Region of Peel. The Project route closely follows the route of the existing Imperial Oil pipeline. The Project route will use part of the width of the existing right-of-way (ROW) but will need to expand that width in certain areas. Construction of the pipeline is projected to last 8-10 months. Imperial Oil plans for an in-service date in the third quarter of 2021¹.

Imperial Oil's evidence indicates that all required design specifications such as pipeline wall thickness and maximum operating pressure, and pipeline class location are in compliance with the Canadian Standards Association (CSA) CSA Z662-15 "Oil and Gas Pipeline Systems" (CSA Z 662).

The OEB approves the application, subject to certain Conditions of Approval (see Schedule B). The OEB also approves the forms of easement agreements related to the construction of the Project.

¹ Written Reply Submission by Imperial Oil Limited, February 7, 2020, page 7 para 30.

2 PROCESS

2.1 Process Summary

Imperial Oil filed the application on February 25, 2019. Imperial Oil filed updates to its evidence on the purpose and need for the Project on March 15, 2019. On March 19, 2019, the OEB issued a letter acknowledging that the application was complete and that the OEB review had started.

The OEB issued a Notice of Hearing (Notice) on April 11, 2019. The Notice was published as directed. At the end of April, Imperial Oil informed OEB staff that it needed more time for the service of the Notice to certain landowners/encumbrancers identified by the title search along the proposed route. In order to give Imperial Oil adequate time to complete the service, the OEB held the application in abeyance until service was completed. On May 24, 2019, Imperial Oil filed an affidavit with the OEB confirming service of the Notice. The OEB re-started processing the application on that date.

The OEB issued Procedural Order No. 1 (PO No.1), on May 31, 2019, setting the schedule for a written hearing. No party requested an oral hearing.

The following parties are registered as intervenors in the proceeding: Canadian Manufacturers and Exporters (CME), Huron Wendat Nation (HWN), City of Mississauga, City of Toronto, Halton Region, Regional Municipality of Peel (Region of Peel), Greater Toronto Airports Authority (GTAA), Hydro One Networks Inc. (Hydro One) and jointly Peter and Tim Virtanen². CME and HWN are eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards*.

The City of Toronto, City of Mississauga, Halton Region, and Region of Peel (collectively the Municipal Intervenors) actively participated in the proceeding and collaborated on a number of issues throughout the proceeding.

Bell Mobility Inc., Peter and Tim Virtanen and the City of Hamilton applied and were registered as intervenors, but all withdrew during the proceeding. The City of Hamilton filed a letter of comment on August 12, 2019. Imperial Oil responded to these

comments on August 21, 2019. The OEB reviewed the comments and the response, and will provide its view in appropriate sections of this decision.

² Peter and Tim Virtanen were initially granted eligibility for cost awards, but they later withdrew from the proceeding.

Procedural Orders 2 through 6 established the process and timing for interrogatories, confidentiality requests, a motion filed by the City of Toronto, and submissions, and responded to a number of extension requests from both Imperial Oil and intervenors.

In accordance with the schedule set in Procedural Order No. 6, Imperial Oil filed its Argument-in-Chief on January 10, 2020, OEB staff and intervenors filed written submissions on January 24, 2020, and Imperial Oil filed its reply submission on February 7, 2020.

2.2 Confidential Information

On October 10, 2019, Toronto filed a Notice of Motion pursuant to Rule 27.03 of the OEB's *Rules of Practice and Procedure* requesting that the OEB order the disclosure of certain information (Motion).

On November 14, 2019, the OEB issued a Decision and Order on the City of Toronto's Motion (Decision on Motion), dismissing the Motion. Pursuant to the OEB's Decision on Motion, Imperial Oil filed with the OEB and delivered to all the intervenors the following redacted information by November 18, 2019:

- (a) Imperial Oil's Safety and Loss Management System (SLMS) Framework
- (b) 2018 Technical Standards and Safety Authority (TSSA) Audit Report of Imperial Oil's Sarnia Products Pipeline (SPPL) Integrity Management Program
- (c) Imperial Oil's preliminary risk assessment for the Project

In the Decision on Motion, the OEB deemed the information ordered to be filed by Imperial Oil as confidential on an interim basis, and set the process for accessing the confidential information and filing submissions regarding the confidential treatment of that information. Imperial Oil filed the confidential information and provided explanation and specific reasons as to why the information should be treated as confidential. No party objected to confidential treatment of the filed information.

On January 24, 2020, the City of Toronto filed with the OEB written submissions on Imperial Oil's application and indicated that it would include a confidential attachment (Confidential Attachment). The City of Toronto stated that it would provide the Confidential Attachment "...to any party(s), if so directed."

On February 4, 2020, the OEB issued a letter confirming that the information in the Confidential Attachment filed by the City of Toronto is an excerpt from the "TSSA Audit of SPPL Integrity Management Program – December 2018" filed by Imperial Oil (TSSA

Audit Report) and that the OEB had deemed the TSSA Audit Report confidential on an interim basis on November 14, 2019.³ The OEB also, at that time, established a process for any party to review the Confidential Attachment, object to the proposed confidential treatment, and for Imperial Oil to respond to any objection. No objections were filed.

As the Confidential Attachment was a quote from the TSSA Audit Report that had already been deemed confidential on an interim basis by the OEB, the Confidential Attachment was also deemed confidential on an interim basis. To provide any party an opportunity to access the quote from the TSSA Audit Report in the Confidential Attachment, the OEB directed the City of Toronto to make the Confidential Attachment available to any party who provided a signed copy of the OEB's Declaration and Undertaking.

Findings - Confidential Treatment of Certain Information

Given that no objections were received to the designation of the subject information as confidential, the OEB finds that this information shall be treated as confidential on a final basis.

³ OEB Decision and Order on the City of Toronto Motion, EB-2019-0007, November 14, 2019.

3 LEAVE TO CONSTRUCT APPLICATION

3.1 Scope of the Review

This is an application under section 90 of the OEB Act seeking an order for leave to construct a hydrocarbon pipeline. Section 96 of the OEB Act provides that the OEB shall make an order granting leave if the OEB finds that “the construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the OEB typically examines the need for the project and alternatives, the project cost and economics, the environmental impacts, Indigenous consultation, and land matters.

The OEB typically attaches a number of conditions to any approvals it grants. In this case, the OEB’s review does not include consideration of the Project cost and economics as Imperial Oil is not a rate-regulated entity, and the costs of the Project will therefore not be passed on to ratepayers through any OEB-approved rates. Imperial Oil also applied for approval of forms of easement agreements under section 97 of the OEB Act.

Some intervenors in this proceeding raised certain issues that the OEB finds are beyond the scope of the OEB’s review under sections 90, 96 and 97 of the OEB Act.

The Municipal Intervenors raised issues and proposed a number of conditions of approval related to pipeline design, safety of operation, pipeline integrity, emergency response and risk management, decommissioning of the pipeline and indemnity guarantees and financial assurances to municipalities. In addition, the Municipal Intervenors submitted for OEB’s approval, under section 97, proposed forms and terms of various agreements with Imperial Oil.

Hydro One raised the issue of minimum setbacks and width of easement for co-location of the pipeline relative to electrical transmission line and asked that the OEB approve a form of easement agreement with Imperial Oil.

All parties, including Imperial Oil, appeared to agree that these issues are of critical importance. However, parties disagreed on whether these issues are properly within the scope of the OEB’s review of a section 90 and section 97 applications. OEB staff’s and Imperial Oil’s position was that these issues are partially, or entirely, outside the regulatory oversight of the OEB. The Municipal Intervenors and Hydro One took a position that these matters are within the scope of the OEB’s review of a leave to construct application under section 90 and 97.

In Ontario, the TSSA have some level of oversight over safety of pipelines operation. The TSSA administers and enforces public safety laws under the authority granted to it by the *Technical Safety Standard Act, 2000 S.O. 2000, c. 16*, and *Ontario Regulation 210/01 (Oil and Gas Pipeline Systems)*.⁴ The TSSA oversees pipeline design specifications, safety and emergency matters, integrity testing and monitoring, and decommissioning in accordance with the CSA Z662 code, a national standard that is adopted within Ontario legislation through O. Reg. 223/01 and the *Technical Standards and Safety Act*.

It is also noted that the proposed Imperial Oil pipeline has to be licensed by the TSSA pursuant to the Ontario Regulation 210/01, which requires that the TSSA licenses and audits oil and gas pipelines in Ontario that are longer than 20 kilometres. The TSSA has confirmed, in a letter to Imperial Oil dated October 25, 2019, that it has selected the Project for full audit and that the TSSA will “audit and inspect the SPPL to ensure compliance with applicable technical and safety standards for construction and operation”.

OEB staff agreed with Imperial Oil’s position that “While technical standards are a consideration in leave to construct proceedings, the Board has in previous proceedings held that it will defer to regulatory agencies that have direct responsibility for the applicable standards.”⁵

OEB staff noted, in its submission,⁶ that in addition to the TSSA’s oversight of the safe operation and design of the proposed pipeline, there are also separate requirements under the *Environmental Protection Act* with respect to spill prevention, spill reporting, spill management plans, spill amelioration, and related powers of the Minister of the Environment, Conservation and Parks.

OEB staff submitted that OEB’s approval of a leave to construct application under section 90 of the OEB Act is typically made conditional upon the applicant’s compliance with all applicable regulatory requirements, including those under the TSSA and MECP’s mandate and legislation. As such, Imperial Oil will be required to satisfy the TSSA’s license terms, pipeline design and safety specifications, pipeline integrity and

⁴ In its Decision and Order on Motion of the City of Toronto (November 14, 2019), the OEB recognized the importance of safe operation of a proposed oil pipeline but indicated that many of the safety and emergency response concerns raised by Toronto in its Motion appear to be under the jurisdiction and expertise of the TSSA.

⁵ Imperial Oil Argument-in-Chief, January 10, 2020, paragraph 27, page 6.

⁶ OEB Staff Submission (EB-2019-0007), January 24, 2020, page 4

emergency management requirements, including MECP's requirements related to the risk of spills, and to meet all other applicable Provincial and Federal standards and regulations.

Findings

The OEB finds that certain issues raised by the Municipal Intervenors (e.g. technical standards, environmental legislation) are beyond the scope of the OEB's review under sections 90, 96 and 97 of the OEB Act. The OEB also finds that many of these issues are part of the requirements for other permits and approvals for construction and operation of the proposed pipeline which are addressed by other entities. The OEB is ensuring that these issues are addressed by including a condition in Schedule B of this Decision and Order that Imperial Oil obtains all other necessary approvals, permits, licences, and certificates required to construct, operate and maintain the Project.

3.2 Need for the Project and Alternatives

The purpose of the pipeline is to transport refined petroleum products used by households and businesses in the GTA and Hamilton areas, including supply of jet fuel for Toronto Pearson International Airport, as well as gasoline and diesel fuel for transportation in the region.

According to Imperial Oil, the replacement of the existing, sixty-year old pipeline will ensure continuous safe and reliable transportation of fuel products such as diesel, gasoline and jet fuel.

The new 12-inch diameter proposed pipeline will replace the existing pipeline of the same diameter. Imperial Oil noted that the proposed pipeline is an important infrastructure component with significant benefits. Imperial Oil filed a number of letters from several parties in support of the need for the proposed pipeline project. These parties, who emphasized the commercial, supply reliability and other economic benefits of the Project, included:

1. Canadian Council for Aboriginal Business
2. Canadian Fuels Association
3. Canadian Independent Petroleum Marketers Association
4. Canadian Manufacturers & Exporters
5. Greater Toronto Airports Authority
6. Hamilton Chamber of Commerce
7. McDougall Energy Inc.
8. Mississauga Board of Trade

9. National Airlines Council of Canada
10. Ontario Chamber of Commerce
11. Toronto Board of Trade
12. Flamborough Chamber of Commerce

On January 24, 2020, the Canadian Manufacturers and Exporters and Greater Toronto Airports Authority filed written submissions in strong support of the approval of the Project to fulfil the need for a reliable and safe supply of high-quality fuel products and emphasizing the importance of the Project for Ontario and Canadian economy.

Imperial Oil stated that the Waterdown to Finch segment of the SPPL has been operating safely for more than 60 years. The replacement of this segment is a proactive replacement as part of the ongoing integrity management program of the SPPL. In addition to ensuring continued safe and reliable pipeline operations, installation of the new pipeline includes benefits such as improved product availability for customers and reduced supply disruptions due to integrity and maintenance activities, as well as increased pipeline depth in sensitive areas. Imperial Oil stated that construction of the Project will contribute to the local and regional economy.

Imperial Oil noted that other possible options to replace the transportation capacity of the pipeline, such as truck transportation, are not suitable alternatives, as it would require 400 tanker trucks per day to provide transport of the equivalent volume of fuel. No party challenged the need for the Project.

The preferred proposed route for the Project was selected based on the assessment of two alternative routes. Both alternatives followed the existing pipeline route for 18.8 kilometres. The preferred route alternative, among other comparative advantages, follows the existing pipeline along its entire length, is 14 kilometers shorter, and has fewer wetland and stream crossings⁷.

Findings - Need and Alternatives

The OEB finds that Imperial Oil has demonstrated the need for the Project. The Project entails the replacement of a portion of an existing pipeline which is over 60 years old. This will ensure continued safe and reliable operation of the pipeline. The OEB also

⁷ Evidence (EB-2019-0007) Exhibit D, Tab 1, Schedule 1, pages 1-2: Route Selection.

finds that Imperial Oil has appropriately assessed other feasible alternatives, and that the proposed route is appropriate.

3.3 Environmental Matters

Selection of a route, environmental assessment, mitigation and monitoring of impacts during construction and operation of a pipeline requiring approval by the OEB under section 90 of the OEB Act are guided by the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (7th Edition, 2016) (OEB Environmental Guidelines).

The OEB Environmental Guidelines prescribe, amongst other things, the process for a review of the proposed pipeline project environmental assessment report, including a review of the proposed route, by the Ontario Pipeline Coordinating Committee (OPCC). The OPCC is comprised of government agencies, provincial ministries, local municipalities and conservation authorities that have an interest in and regulatory authority over environmental and socio-economic aspects of proposed pipeline projects. The OPCC review facilitates a coordinated process for other relevant approvals and permits to be granted to the proponents of pipelines that seek leave to construct under section 90 of the OEB Act.

Imperial Oil conducted the environmental assessment, routing, and stakeholder consultation in accordance with the OEB Environmental Guidelines.

Imperial Oil retained ERM Worldwide Group Ltd. (ERM) to conduct an environmental assessment and prepare an Environmental Report (ER) on the Project. The ER was filed with the application⁸. ERM completed a study to select a preferred route for the proposed pipeline and identified potential environmental and socio-economic impacts and mitigation measures to minimize these impacts. On February 1, 2019, Imperial Oil distributed the ER to the members of the OPCC, affected conservation authorities, municipalities and Indigenous communities for review and comments.

Imperial Oil documented issues and concerns raised in the process of the ER review by the OPCC and other consulted entities in the Record of Consultation Log. The Record of Consultation Log specifies Imperial Oil's responses and proposed actions to address issues and concerns, and to mitigate impacts. The Record of Consultation Log covers the consultation and communication with all stakeholders, including: Indigenous

⁸ Evidence (EB-2019-0007) Imperial Oil, Waterdown to Finch Environmental Report, February 1, 2019, filed February 25, 2019.

communities, the Métis Nation of Ontario, OPCC members, conservation authorities and municipalities.

In response to interrogatories, Imperial Oil updated the comments it had received as part of the OPCC review, including the dates of communication, the issues and concerns identified by the parties, and Imperial Oil's responses and actions to address these issues and concerns.⁹

The HWN, the Mississaugas of the Credit First Nation (MCFN), the City of Mississauga, the Ministry of Transportation of Ontario (MTO), the Toronto and Region Conservation Authority, the Hamilton Conservation Authority, and Conservation Halton commented on the ER as part of the OPCC review process. Each party's position is further described below.

HWN and MCFN expressed concerns about Imperial Oil's archaeological assessment.¹⁰ MCFN provided an email on February 21, 2019 with its comments on the ER. Imperial Oil provided responses to help clarify MCFN's inquiries.

With regard to approval of archeological survey reports and cultural heritage reports by the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) which have not been granted at this time, OEB staff submitted that, according to the proposed Condition 5.a) v, Imperial Oil will have to obtain, among other approvals, MHSTCI approval prior to construction start.¹¹ OEB staff noted that Imperial Oil did not object to this condition being attached to the OEB's leave to construct order.

HWN's concerns related to Imperial Oil's archeological assessment and the Parsons Site and Imperial Oil's actions to mitigate these potential impacts are addressed in the Indigenous Consultation section of this Decision and Order. Parsons Site is HWN's ancestral village site of great importance, dating from the 15th century, located northwest of Finch and Keele on the east bank of Black Creek extending north and south of the Hydro One corridor.

Imperial Oil in its Argument-in-Chief confirmed that it recognizes the significance of the Parsons Site and that it is committed to protecting its integrity through the use of trenchless construction methods drilling (Horizontal Directional Drilling or HDD) at 30

⁹ Imperial Oil response to OEB staff interrogatory no. 8 and Appendix 11: Engagement Summary Tables

¹⁰ Chapter 5.3 of the OEB Environmental Guidelines deals with the archeological assessment and mitigation of impacts.

¹¹ OEB Staff Submission EB-20190-0007, January 24, 2020, page 11

metres depth, or deeper, beneath the site and extending beyond its limits.¹² Imperial Oil also confirmed that prior to construction it will develop avoidance and protection plan for the Parsons Site in consultation with the HWN and MHSTCI.¹³

It should be noted that HWN, in its written submission dated January 24, 2020, stated that "...the HWN is satisfied with the commitments Imperial has made to avoid and mitigate the Project's impacts to archaeological and burial sites and supports the approval of leave-to-construct application".¹⁴

Imperial Oil has collaborated with HWN during the ongoing archaeological assessments.

Imperial Oil indicated that it received no comments on the ER from Haudenosaunee Confederacy Chiefs Council, Haudenosaunee Development Institute or from Six Nations.

On December 2, 2019, the OEB was copied on a letter by MHSTCI¹⁵ to Imperial Oil requesting that Imperial Oil file its Cultural Heritage Assessment Report (CHAR) for review. On December 3, 2019 Imperial Oil filed with the MHSTCI the required report for review.¹⁶

The MTO commented that it did not have concerns with the ER as long as Imperial Oil follows all applicable environmental legislation and obtains required permits. The MTO also asked to be informed of any work within its right- of-way to mitigate impacts to MTO projects. Imperial Oil responded that it would continue ongoing engagement with the MTO throughout the Project. Imperial Oil said it received no other comments from ministries during the OPCC review.

The City of Mississauga provided its comments on the ER by letter on April 3, 2019. Imperial Oil provided a detailed response letter on May 3, 2019. Imperial Oil stated that other municipalities or regions did not comment specifically on the ER. It is noted that a number of concerns related to environmental matters have been raised by the Municipal

¹² Imperial Oil Limited, Argument-in-Chief, January 10, 2020, para 70-71, page 16

¹³ Imperial Oil Limited, Argument-in-Chief, January 10, 2020, para 74-75, pages 16-17

¹⁴ Written Submission by Huron Wendat Nation, EB-2019-0007, January 24, 2020, para 7. Page 3.

¹⁵ Formerly Ministry of Tourism, Culture and Sports (MTCS) now called Ministry of Heritage, Sport, Tourism, and Culture Industries.

¹⁶ Imperial Oil filed with the OEB a copy of the letter to MHSTCI, dated December 3, 2019 indicating that the required reports have been filed.

Intervenors by way of proposing conditions of approval. These are addressed in section 3.6 Conditions of Approval of this Decision and Order.

Hamilton Conservation Authority, Toronto and Region Conservation Authority and Conservation Halton commented on the ER during the OPCC review process. Their comments related to their respective permitting processes and requirements. On July 5, 2019, Imperial Oil filed permit applications with the conservation authorities.

Imperial Oil submitted in the evidence that it would develop several Environmental Protection Plans (EPPs)¹⁷ and several management and contingency plans prior to construction start. Imperial Oil stated that the EPP will be used as a guide for environmental management during construction of the Project and will be based on mitigation measures identified in the ER. The EPP will include a number of specific Environmental Management Plans (EMPs) related to Project schedules, permit approval terms and conditions. The EPPs and EMPs will address issues and concerns raised by the OPCC members and by other consulted stakeholders.

Imperial Oil has stated that the EPPs and EMPs will be completed a minimum of 30 days prior to the start of construction and will be updated as needed throughout construction to reflect conditions of permits and approvals.

In response to interrogatories, Imperial Oil outlined the content of the EPPs and EMPs as follows:¹⁵

- An introduction to the Project and a description of the environmental setting and project schedule
- An introduction to the EPP including an overview of the purpose and extent of the document
- An overview of the environmental management of the Project, such as roles and responsibilities, training programs, and document control
- General environmental measures applicable to all pre-construction Project activities
- Resource-specific environmental measures applicable to all Project activities
- Specific environmental measures applicable to all pipeline construction Project activities
- Site-specific environmental alignment sheets
- Project post-construction monitoring activities

¹⁷ Application, Exhibit D: Routing and Environmental, Tab 1, Schedule 3: Environmental Protection Plan, page 1.

In the ER, Imperial Oil indicated that as part of the EMP, the following plans will be developed:¹⁸

- Erosion and Sediment Control Plan (ESCP)
- Water Management Plan
- Reclamation Plan
- Spill Prevention and Response Plan (which includes prevention (or management) and response (or contingency) measures)
- Traffic Management Plan
- Health and Safety Plan
- Communication Plan
- Waste Management Plan
- Contaminated Materials Management and Handling Plan.

Imperial Oil also stated that it would develop contingency plans to prepare its response to unexpected and unplanned events during construction that may impact the environment (Contingency Plans). The Contingency Plans will include:¹⁹

- Inadvertent Returns during HDD Plan
- Contaminated Material Management and Handling Plan
- “Chance Find” Contingency Plan for Archaeological Resources.

Regarding the EPP and EMP documents and management and contingency plans that Imperial Oil indicated will be developed prior to construction start, OEB staff recommended that the OEB consider adding a condition of approval requiring that Imperial Oil notify the OEB and all parties in this proceeding of completion of each of these documents and make a copy of the documents available to a party upon their request. Imperial Oil stated that “Given that the OEB Conditions will require Imperial to comply with the recommendations of the Environmental Report, Imperial will be obligated to create and implement these plans.”²⁰

OEB staff noted that Imperial Oil has adhered to the requirements of the OEB Environmental Guidelines. Imperial Oil has been communicating with the affected stakeholders and that it has been committed to ongoing communication and cooperation with affected entities and permitting authorities.

¹⁸ Waterdown to Finch Project, Environmental Report, February 2019, ERM, Section 7: Environmental Protection, Management and Contingency Plans, pages 7-1 to 7-4

¹⁹ Waterdown to Finch Project, Environmental Report, February 2019, ERM, Section 7: Environmental Protection, Management and Contingency Plans, pages 7-1 to 7-4

²⁰ Imperial Oil Limited, Reply Argument, February 7, 2020, para 57, page 13

Imperial Oil plans to develop specific operational plans for environmentally sound construction of the Project. Both EPP and EMP documents will be developed prior to construction start and will incorporate specific measures and actions to implement mitigation measures. EPPs and EMPs will be developed to address and implement terms and conditions of permits and approvals that Imperial Oil has to acquire in addition to the OEB's approval for construction of the Project.

Imperial Oil is committed to developing contingency plans for contaminated materials handling during construction, and contingency plans should archeological resources be unexpectedly uncovered during construction.

OEB staff pointed out that the conditions of approval proposed by OEB staff and accepted by Imperial Oil include conditions to address OPCC review outcomes, land restoration, environmental monitoring and the requirements that Imperial Oil obtain all other permits and approvals for the Project.

Findings - Environmental Matters

The OEB is satisfied that the environmental impacts of the Project have been adequately mitigated. The proposed route of the Project is supported by the ERM study and represents the least potential for adverse environmental and socio-economic impacts. The OEB finds that Imperial Oil has followed an extensive process which meets the expectations of the OEB's Environmental Guidelines. This included:

- ongoing communication and consultation with affected stakeholders,
- production of an environmental report and the review of such report by the OPCC and others, and
- a commitment to prepare an Environmental Protection Plan (EPP) and an Environmental Management Plan (EMP) prior to construction start and communicating these plans to affected stakeholders.

The OEB makes the filing of the EPP and EMP, as well as the compliance of any recommendations resulting from the OPCC review a condition of approval of this application.

3.4 Land Matters

This section includes issues and findings on land rights requirements for the Project, forms of easement agreements proposed for OEB's approval by: i) Imperial Oil ii)

Intervenors. It also covers other permits and approvals which Imperial Oil needs for the Project.

Land Rights Requirements

The Project will be located parallel to the existing pipeline within an Imperial Oil easement for approximately one-third or 18.8 km of the Project, on lands owned by Imperial Oil. Approximately 70%, or 43.7 km, of the Project will be located within a corridor managed by Hydro One, on lands that are owned by the Province and administered by Infrastructure Ontario. In addition to permanent land rights from Hydro One, Imperial Oil needs permanent easement rights from various municipal, provincial and utilities' land owners (approximately 25.34%); and five private landowners (approximately 5.34%). Imperial Oil will also require the right to use temporary work areas adjacent to the new or existing easement in order to store materials and machinery, and to conduct construction activities. These areas will require new temporary easements. Imperial Oil distinguished temporary workspace (TWS), which is typically 10 metres wide, from extra temporary workspace (ETWS), which varies in size depending on the location and use.

To accommodate the location of the new pipeline, Imperial Oil already has 48.74 hectares (120.45 acres) of existing easement; will have to acquire 5.77 hectares (14.24 acres) of new permanent easements; 107.80 hectares (266.37 acres) of ETWS; 56.60 hectares (139.86 acres) of TWS and 0.01 hectares of land rights for permanent valve locations. The total area of new land rights required for the Project is 218.92 hectares (540.95 acres).²¹

At this time, Imperial Oil has not secured any of the permanent easements along the route of the Project, but it has acquired three hectares or approximately 3.37% of the temporary land rights needed for the Project. Imperial Oil noted that it expects the majority of agreements and permits from permitting authorities and various public and private agencies to be received by Q2 of 2020²².

Hydro One, in its written submission dated January 24, 2020, noted that none of permanent land rights along the Hydro One corridor have been secured by Imperial Oil to date, and raised the issue of the appropriate width of the additional land that Imperial

²¹ Imperial Oil Limited Argument-in-Chief, January 10, 2020 para 55, pages 11-12

²² In its Argument-in-Chief dated January 10, 2020 and its Reply Submission dated February 7, 2020, Imperial Oil did not indicate it had acquired any of the required permanent easements rights. According to the updated Project Milestones schedule filed by Imperial Oil in its Reply Submission dated February 7, 2020, Imperial Oil plans to receive permits and approvals by Q2 2020 and start construction in Q3 2020.

Oil requires to co-locate the Project within Hydro One's ROW.

According to Hydro One, a 12-inch additional easement proposed by Imperial Oil is not sufficient for the purpose of accessing the pipeline by Imperial Oil for maintenance and is not acceptable to Hydro One for operational risk reasons. Hydro One stated that "...Imperial has not approached Hydro One for any additional lands for maintenance. "

With the Imperial- requested 1 foot easement, it remains unclear to Hydro One how Imperial will ensure that it has access to complete any future maintenance activities.²³ Hydro One requires at least a 10 foot (3 metres) separation to lower the risk of co-location of the pipeline and transmission line infrastructure. Hydro One referred to the OEB decision granting Leamington Pipeline Expansion Project approval which was conditional on minimum 10 foot separation between the pipeline wall and footing of transmission towers "...even with all the low risk variables to co-location".²⁴

In response to Hydro One's submission, Imperial Oil stated that "...with guidance from the Ministry of Government and Consumer Services, Imperial has confirmed to HONI its agreement in respect of easement width required by HONI".²⁵

Regarding the status and prospect of negotiations with affected landowners, Imperial Oil confirmed that it is working with landowners to present agreements to the landowners and acquire temporary and permanent land use rights at mutually acceptable terms²⁶. In its Argument-in-Chief, Imperial Oil stated that "... it remains in active negotiations with affected landowners and will obtain all land-related permits and agreements required with or for Project construction."²⁷

Forms of Easement Agreements

According to section 97 of the OEB Act, "In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an

²³ Hydro One Networks Inc., Submission EB-2019-0007, January 24, 2020, page 8, para 27.

²⁴ Hydro One Networks Inc., Submission EB-2019-0007, January 24, 2020, pages 7-8, para 23-24, reference to OEB Decision and Order, Union Gas Limited, Leamington Pipeline Expansion Project, EB-2016-0013.

²⁵ Imperial Oil Limited Reply Submission, February 7, 2020, para 86, page 18

²⁶ Imperial Oil's response to OEB staff interrogatory no. 10

²⁷ Imperial Oil's Argument-in-Chief, January 10, 2020, paragraph 48, page 10

agreement in a form approved by the Board.” Imperial Oil has requested approval of the forms of permanent and temporary land use agreements it will offer or has offered to affected landowners as part of the application.

Forms Submitted by Imperial Oil

Imperial Oil filed in its evidence²⁸ and in the Argument-in-Chief²⁹ forms of easement agreements to be approved by the OEB under section 97 of the OEB Act.

Imperial Oil stated that the following four forms of agreements are required:

- the Grant of Easement
- Temporary Workspace Lease
- TWS Lease – Laydown and Storage
- Construction Access agreements

Imperial Oil stated that these forms have not been previously approved by the OEB. Imperial Oil emphasized in its Argument-in-Chief that these forms are “substantially similar” to those previously approved by the OEB³⁰. Imperial Oil noted that the forms of agreement were drafted by its Ontario legal counsel for use in Ontario.

OEB staff submitted that it reviewed the forms of the permanent and temporary land use agreements in comparison to previously-approved forms of agreements for pipeline projects approved under section 90 of the OEB Act³¹ and concluded that it appears that the forms submitted by Imperial Oil are consistent with forms previously approved by the OEB, with no substantial differences. Imperial Oil confirmed that the same forms of the agreement have been, or will be, offered to the affected landowners³².

Forms Submitted by Intervenors

City of Toronto, City of Mississauga, Region of Peel, and Hydro One requested that the OEB approve their standard forms of land agreement and/or impose conditions

²⁸ Application, Exhibit F, Land Matters, Tab 1, Schedule 4, Attachment 1: Grant of Easement Pipeline (Ontario) Agreement and Attachment 2: Temporary Workspace Lease Agreement

²⁹ Imperial Oil’s Argument-in-Chief, January 10, 2020, Appendix B

³⁰ Imperial Oil’s Argument-in-Chief, January 10, 2020, paragraph 60, page 13

³¹ EB-2016-0186 Union Gas Limited Panhandle System Reinforcement Application, EB-2014-0261 Union Gas Limited 2016 Dawn to Parkway Expansion Project Application

³² Imperial Oil response to OIEB staff interrogatory 12 a)

requiring Imperial Oil to use a Municipality's standard form of agreement. For example, the City of Mississauga filed³³ for OEB approval forms of agreement related to construction of the Project. These forms include a permanent easement agreement, temporary workspace agreement, and municipal highway crossing agreement that have to be used in each municipality when municipally owned lands are affected. Hydro One filed a number of forms of agreements to be executed by Imperial Oil and Hydro One as well, and requested that the OEB approve these forms for use³⁴.

Imperial Oil's position was that these requests are not in line with the meaning of section 97 of the OEB Act and that the forms of agreement approved by the OEB are "...intended to provide a "baseline" for the initial offer of an easement agreement." Further, Imperial Oil argued that, Municipal Intervenor and Hydro One, by requesting that the OEB impose agreements-related conditions on its approval of the Project, are in fact requesting that the OEB impose terms on negotiations between landowners and Imperial Oil, which is, in Imperial Oil's view, not "proper and should not be imposed".³⁵

Other Permits and Approvals

Imperial Oil indicated that the Project will cross linear features such as watercourses, roads, power lines, gas pipelines and other utilities and that these crossings will require permits and agreements. The evidence provides a summary of all permits and agreements required³⁶.

Imperial Oil stated that it has applied, or will apply, for a number of approvals and permits such as: encroachment permits; road occupancy and road crossing and utility crossing permits; entrance permits; municipal consent; water source/water disposal permits (to be submitted but may not be required); Public Utilities Coordination Committee (PUCC) approval in the City of Mississauga and Region of Peel; park access permit; municipal consent; utility crossing approval; and permanent and temporary crossing approvals.

Entities that are the granting authorities for the permits and approvals include: Canadian National Railway; Canadian Pacific Railway; Metrolinx; Hydro One Networks

³³ City of Mississauga, Final Submissions, EB-2019-0007, January 24, 2020, Appendix C

³⁴ Hydro One Networks Inc., Submission EB-2019-0007, January 24, 2020, pages 8-9, para 31

³⁵ Imperial Oil Limited Reply Argument, February 7, 2020, para 79-82, pages 17-18

³⁶ Application, Exhibit F, Land Matters, Tab 1, Schedule 3: Land Related Permits and Agreements Required, pages 1-5 Table 3-1 and updated Table 3-1 in response to OEB staff interrogatory no. 11

Inc./Infrastructure Ontario; Ministry of Transportation; Ministry of Government and Consumer Services/Infrastructure Ontario; all the regional and local municipalities where the Project route is located; conservation authorities; provincial and national pipeline operators whose pipelines have to be crossed; electricity distributors with infrastructure affected by the Project route; and mobile and internet service providers.

In its Argument-in-Chief, Imperial anticipates that most of the agreements and permits will be received by the 2nd quarter of 2020 and the remaining by the 3rd quarter of 2020.

Findings - Land Matters

The OEB approves the forms of easement agreement proposed by Imperial Oil. These forms are consistent with forms approved by the OEB in other cases. It should be noted that the OEB approval is for the “forms” of these agreement which establishes the baseline for discussion with the affected entities. The intent is that the details of such agreements will be discussed and customized with each entity based on the specific circumstances.

The conditions of approval for this application require Imperial Oil to obtain all other necessary permits, licences and approvals required from other entities, including affected municipalities, before construction can commence.

3.5 Indigenous Consultation

Imperial Oil initiated, and has been conducting, consultation with Indigenous communities potentially impacted by the Project, in accordance with the protocol set in the OEB Environmental Guidelines³⁷. Prior to application filing, Imperial Oil contacted the Ministry of Energy, Northern Development and Mines (MENDM) with respect to the Crown’s duty to consult. On September 10, 2018, Imperial Oil received correspondence from the MENDM, indicating that the procedural aspects of the duty to consult were delegated to Imperial Oil (Delegation Letter). The Delegation Letter included a list of Indigenous communities that Imperial Oil should consult about the Project:

1. Mississaugas of the Credit First Nation
2. Six Nations of the Grand River
3. Huron-Wendat Nation (HWN)

³⁷ Indigenous Consultation process for the pipeline projects subject to the OEB’s approval are described in section 3.3

The MENDM's Delegation Letter directed Imperial Oil to consult with both the Six Nations Elected Council and the Haudenosaunee Confederacy Chiefs Council (HCCC), and stated that all correspondence with the HCCC should copy the Haudenosaunee Development Institute (HDI)³⁸. Although the Métis Nation of Ontario (MNO) was not listed in the Delegation Letter, Imperial Oil added the MNO as an Indigenous community to be informed of the Project and provided notification and offered to meet to discuss any potential concerns. MNO did not request a meeting and did not raise any issues

In addition to the engagement and consultation notifications set out in the OEB Environmental Guidelines, Imperial Oil served the OEB's Notice of Hearing on all Indigenous communities identified by MENDM and on the MNO.

Imperial Oil filed its Indigenous Consultation Report (ICR) dated February 22, 2019, with the MENDM and included a copy with its application filed with the OEB. The ICR describes consultation activities, key comments, Imperial Oil's responses and commitments to address issues and concerns. The information on Indigenous consultation is recorded in the Record of Consultation Log³⁹. Imperial Oil provided an update to the Record of Consultation Log in response to interrogatories on August 2, 2019⁴⁰.

HWN was the only indigenous community that applied for, and was granted, intervenor status and eligibility for cost awards in this proceeding. HWN actively participated in the hearing by asking interrogatories and providing written submissions.

Further updated Indigenous Consultation Logs and supporting documentation filed on January 9, 2020 provide information on Imperial Oil's continued consultation with all three potentially affected Indigenous groups and the MNO. Imperial Oil engaged with the MCFN and Six Nations starting in May 2018 and collaborated to enable the participation of their field liaison and monitors in the field surveys and inviting them to participate in archaeological and environmental field surveys.⁴¹

³⁸ The HCCC and the HDI represent the Six Nations of the Grand River. On November 26, 2018 the OEB received a copy of the correspondence from Mr. Detlor of HDI to Imperial Oil, which was intended to commence an engagement process related to the Project. The OEB responded to Mr. Detlor by a letter dated January 11, 2019.

³⁹ EB-2019-00007 Application, Exhibit H, Tab 2, Schedule 1-6

⁴⁰ Imperial Oil's Response to OEB staff interrogatories, Appendix 11, Engagement Summary, Table 1- Indigenous Communities, includes communication with HWN on July 23, 2019

⁴¹ Imperial Oil Limited Updated Record of Consultation, Exhibit H, Tab 2, Schedule 1, January 9, 2020.

The HWN letter to the OEB requesting intervenor status dated June 25, 2019 stated, among other things, that the pipeline will be located "...through the traditional territory of the Huron-Wendat Nation. This territory contains the richest recorded archeological history in Ontario. One of the Huron-Wendat Nation's most important archeological sites in Ontario, the Parsons Site (AkGv-8) is located on the proposed path of the pipeline." The Parsons Site is situated on the main terrace above the east bank of Black Creek, extending across and to the north and south of Hydro One's corridor. The Project will use an approximately 1 km long horizontal directional drill (HDD) trenchless method to cross 30 meters below the Parsons Site.⁴² In its Argument-in-Chief, Imperial Oil described its efforts to protect the Parsons site stating that "...recognizing that the full extent of the Parsons Site remains uncertain, Imperial Oil has planned to extend the HDD from the west side of Black Creek to the east side of Sentinel Road resulting in an approximately 450-metre buffer to the east and west of the Parsons Site as defined by the village palisade and identified middens."⁴³ Imperial Oil also noted that it will re-evaluate the size of the buffers based on field assessment and Stage 2 Archeological Assessment.²⁶

Imperial Oil completed the Stage 1 archeological assessment, identifying registered archeological sites in the Ontario Archaeological Sites Database along the Project route.

Imperial Oil stated that it will develop a site avoidance and protection strategy for the Parsons Site prior to construction, will continue to consult and engage HWN during the development of this plan, and will provide a draft of the plan for review prior to implementation. The plan will be enforced during construction and, as required by the MHSTCI, a Stage 4 Avoidance and Protection report will be completed. The plan will follow the requirements set in the Standards and Guidelines for Consultant Archaeologists (MTCS 2011) ⁴⁴. HWN, in its final submission, stated that Imperial Oil is committed to "...continuing to seek the HWN input on risk mitigation plans, such as the Chance Find Contingency Plan, to ensure that impacts on archaeological and burial sites are avoided or mitigated."⁴⁵

OEB staff noted that, in response to OEB staff interrogatory no. 9, Imperial Oil stated it would develop a site avoidance and protection strategy prior to construction for the

⁴² Imperial Oil's Response to HWN interrogatory no. 1 a)

⁴³ Imperial Oil Argument-in-Chief, January 10, 2020, paragraph 71, page 16.

²⁶ Imperial Oil Argument-in-Chief, January 10, 2020, paragraph 72, page 16.

⁴⁴ Imperial Oil's Response to OEB staff interrogatory no. 9

⁴⁵ Written Submission of Huron Wendat Nation, EB-2019-0007, January 24, 2020, page 8, para 39.

Parsons Site and that it would follow the requirements set out in the Standards and Guidelines for Consultant Archaeologists (MTCS 2011).⁴⁶

In its Argument-in-Chief, Imperial Oil restated that it "...recognizes that HWN has particular concerns in respect of a location of archaeological significance known as the Parsons Site." but also argued that it "...has met and exceeds the delegated aspects of consultation, including with respect to HWN. As consultation will be ongoing throughout the life of the Project, Imperial submits that the concern of HWN should not prevent the Board from finding that the duty to consult has been met for the purposes of leave to construct."⁴⁷

Imperial Oil stated that it would develop and provide an Operational Emergency Response Plan for the operation of the Project including the Indigenous community component (i.e., a notification protocol in the event of an incident) of this plan with Indigenous communities. A Spill Prevention and Response Plan for Project construction will also be developed with engagement of the Indigenous communities regarding potential impacts on archaeological sites. A comprehensive Stage 2 archaeological assessment is currently being completed to identify any non-registered archaeological sites and to confirm and clarify the location and extent of known sites identified in the Stage 1 archaeological assessment. Stage 2 fieldwork has been conducted with participation of Archaeological monitors from Indigenous communities including HWN. Imperial Oil will provide the Stage 2 assessment report for review and comments to the Indigenous communities prior to, or at the same time as, it files the Stage 2 Report with the MHTSCI.⁴⁸

In its final submission, HWN stated:

In light of the positive relationship that Imperial and the HWN have been building and Imperial's willingness to work collaboratively with the HWN on accommodation of impacts, the HWN does not have residual concerns with the Project's approval.⁴⁹

On January 28, 2020, the MENDM wrote to Imperial Oil advising "the Ministry has no concerns with the sufficiency of consultation to date".

⁴⁶ OEB Staff Submission, January 24, 2020, EB-2019-0007, page 15

⁴⁷ Imperial Oil Argument-in-Chief, January 10, 2020, paragraph 67, page 15.

⁴⁸ Imperial Oil's Response to OEB staff interrogatory no. 9

⁴⁹ Written Submission of Huron Wendat Nation, EB-2019-0007, January 24, 2020, page 9, para 44.

Findings - Indigenous Consultation

The OEB finds that Imperial Oil followed the OEB's Environmental Guidelines with respect to Indigenous consultation. Given the extensive proposed mitigation measures and the support expressed by HWN in its written submissions, the OEB finds that the duty to consult has been sufficiently satisfied to allow the OEB to approve the application. Imperial Oil is expected to maintain its communication with affected Indigenous communities throughout the life of the Project, including with respect to any impacts on archeological sites.

3.6 Conditions of Approval

This section covers a review and findings of conditions of approval proposed by: i) OEB staff and ii) Municipal Intervenors. Conditions proposed by Hydro One have been addressed in section 3.4 Land Matters.

Conditions Proposed by OEB Staff

By way of interrogatories, OEB staff proposed draft Conditions of Approval for Imperial Oil's review and comments. Imperial Oil, in response to OEB staff interrogatories and in its Argument-in-Chief, agreed with the majority of the conditions but requested amendments to certain conditions. OEB staff in its submission did not oppose the amendments proposed by Imperial Oil with the exception of the proposed changes to Condition 4, 5 and Condition 6.⁵⁰ In its Reply Argument⁵¹, Imperial Oil agreed with the proposed conditions as worded by OEB staff in their submission.

Conditions Proposed by Municipal Intervenors

In their submission, OEB staff noted that the City of Toronto, the City of Mississauga, Halton Region and Region of Peel, in their interrogatories, and the City of Hamilton, in a letter of comment, expressed concerns and raised issues related to pipeline and valve design safety, pipeline integrity, emergency response plans, operational emergency response plans, spill prevention and fire safety, liability insurance, financial responsibility for emergency response, clean-ups in the event of a spill, and decommissioning of the existing pipeline. These parties asked that Imperial Oil provide specific and detailed information and commitments to ensure safe operation of the

⁵⁰ See OEB Staff Submission, January 24, 2020, pages 20-25 for details of amendments proposed by Imperial Oil and for OEB staff responses.

⁵¹ Imperial Oil Limited Reply Argument, February 7, 2020, para 5, pages 1-2.

Project. Imperial Oil stated in response to interrogatories and in response to the City of Hamilton's comments⁵² that the pipeline design specifications, safety and emergency matters, integrity testing and monitoring, and decommissioning will follow all provincial regulations and national requirements⁵³.

In addition, OEB staff noted that the City of Toronto, the City of Mississauga, Halton Region and the City of Hamilton requested that Imperial Oil collaborate with the municipalities when developing important Project-related plans and programs, such as the emergency response and fire safety program. Imperial Oil has stated that it is committed to continuing communication and cooperation with these entities, and that it will continue to work with the affected municipalities and other authorities to adhere to relevant municipal, provincial and national legal, regulatory and permitting requirements to ensure safe operation of the Project. Imperial Oil's evidence includes its Record of Consultation Log, which describes the activities and communication between Imperial Oil and the TSSA on Imperial Oil's adherence to safety, licensing, emergency response and other Project related requirements under the authority of the TSSA.⁵⁴

The following is a summary of conditions that the Municipal Intervenors proposed the OEB imposes on its approval of the Project.

City of Toronto

The City of Toronto submitted that it supports the Project, subject to conditions of approval. The City of Toronto stated that the standard conditions of approval for Leave to Construct applications are not adequate and are not appropriate. The City of Toronto stated that the proposed pipeline is an oil pipeline with greater safety and environmental risks than gas pipelines, passing through a densely populated area. The City of Toronto noted that there are "significant unresolved" issues and concerns and that Imperial Oil's Environmental Report has not fully addressed potential issues of the Project, and so the proposed conditions are needed as a result of the gaps in the Environmental Report. The City of Toronto's view was that Imperial Oil's Environmental Report: i) failed to assess post-construction impacts, ii) that the study area is too narrow as it excluded sources of drinking water such as downstream and Great Lakes, and iii) that the potential risks and impacts are not quantified to the extent required by the OEB Environmental Guidelines.

⁵² Imperial Oil responded to City of Hamilton letter of comment by way of letter dated August 21, 2019.

⁵³ Imperial Oil's response to OEB staff interrogatory nos. 2 and 3

⁵⁴ EB-2019-0007 Evidence Exhibit H, Tab 1, Schedule 1, Record of Consultation – supporting Evidence pages 26-27 and 40.

The City of Toronto's position was that "...the OEB decision-making must be consistent with the Provincial Policy Statement (PPS) "including ... protecting natural features and areas, prohibiting or restricting development adjacent to natural areas, minimizing potential negative impacts to water quality, and restricting on site alteration to protect municipal drinking water." The City of Toronto proposed conditions that relate to construction matters, financial assurances for addressing environmental and landowners concerns, Imperial Oil's emergency preparedness and emergency response, protection of drinking water sources, project impacts on sensitive sites and appropriate construction methods, restoration in parks, municipal infrastructure impacts, and impacts on allotment gardens.

The City of Toronto included in its written submission⁵⁵ a list of 39 conditions, and for each condition noted provisions in the PPS and in the OEB Environmental Guidelines that support the proposed condition. The proposed conditions cover:

- General conditions (i.e., design, plan, construct and operate the Project in accordance with the OEB decision; following the recommendations of the OPCC; obtaining all necessary authorizations)
- Construction-related conditions (i.e., compliance with the requirements of the CSA-Z662-; requirement to file the Environmental Protection Plan and project-specific Traffic Management Plan at least 30 days in advance of construction; locating the pipeline valves outside of floodplains)
- Financial assurance-related conditions (e.g., fully indemnify City of Toronto for any costs arising from the construction and operation of the Project, decommissioning of the existing pipeline; fully indemnify City of Toronto for workarround costs connected with maintenance of Toronto infrastructure; maintenance of property insurance and liability insurance; provide Toronto with certificate of insurance form reasonably acceptable to Toronto)
- Emergency response and planning conditions (e.g., maintain sufficient emergency response capability, provide detailed specific information related to emergency response plan at least 30 days in advance of in-service date)
- Source water protection-related conditions (e.g., meet the requirements of the Approved Source Protection Plan: CTC Source Protection Region's LO-PIPE-1

⁵⁵ City of Toronto Submissions, Imperial Oil Limited Waterdown to Finch Project, EB-2019-0007, January 24, 2020, Appendix A- Proposed Conditions and Supporting Provisions

Policy; construct the Project using trenchless technology methods through all sensitive sites)

- Project impacts- related conditions (e.g., file with the OEB a Restoration Plan at least 60 days prior to the construction start; indemnify the TRCA for the costs of restoring any TRCA-regulated areas; not conduct construction in the vicinity of allotment gardens between May 1 and September 30; use Toronto's standard forms of agreements for access to and use of lands for the Project; comply with the Toronto Transit Commission (TTC)'s Technical Review procedure requirements)

City of Mississauga

The City of Mississauga (Mississauga) supports the Project “in principle”, but requests that the OEB impose certain conditions with its approval of the Project. Mississauga proposed “conditions specific to the City”. The proposed conditions⁵⁶ address:

- Financial assurances (e.g., Mississauga asked that the OEB approve the form of Indemnity and Guarantee Agreement it filed)
- Fire safety and emergency response (e.g., provide copies of construction, de-activation and operation-related risk assessments; provide complete details of internal audits and TSSA audits)
- Engineering and land matters (e.g., ensure public safety requirements of directional drilling; ensure that width of the easement is at least 3 metres and is consistent with the requirements of Hydro One Networks Inc. and Infrastructure Ontario)

In addition to requesting the proposed conditions, Mississauga also requested that the OEB approve the “Indemnification and Guarantee Agreement”⁵⁷ that would bind Imperial Oil to indemnify City of Mississauga for activities and costs related to construction of the Project, de-activation of the existing pipeline and operation of the Project within the municipal boundaries.

⁵⁶ City of Mississauga –Final Submissions, EB-2019-0007, January 24, 2020, Appendix A

⁵⁷ City of Mississauga –Final Submissions, EB-2019-0007, January 24, 2020, Appendix B

Regional Municipality of Halton

Halton Region asked that the Project be required to comply with the principles, objectives and policies set out in the Halton Region Official Plan (ROP). Halton Region noted, "...All public works undertaken by the municipality and, with very limited exception, all by-laws passed by the municipality must conform with the official plan." Halton Region referred to its current Emergency Program and Plan and stated that according to this plan, it needs emergency response information related to the Project and that although Imperial Oil provided the Halton Region with its Emergency Response Plan, the information lacks details such as timing of notifying local agencies.

Halton Region requested that the OEB impose conditions of approval for the Project related to the following⁵⁸:

- Risk management – emergency response, financial assurances and risk assessment
- Regional infrastructure –potential Project’s conflicts with regional plans
- Water resources - protection of source and groundwater supply
- Natural Heritage System - woodlands and trees
- Agricultural impacts assessment and mitigation
- Permits and agreements with respect to region-owned lands

Among other conditions, Halton Region asked that Imperial Oil provide an updated emergency response plan at least 30 days prior to construction start. Halton Region explained that it needs emergency response information related to the Project and that, although Imperial Oil provided the Halton Region with its Emergency Response Plan, the information lacks details such as timing of notifying local agencies.

Regional Municipality of Peel

The Region of Peel stated that, since Imperial Oil filed the application, the Region of Peel had collaborated with the City of Toronto, the City of Mississauga and the Halton Region and identified common concerns and coordinated positions. The Region of Peel adopted the submissions of these municipalities with the exception of specific local

⁵⁸ Halton Region–Final Submissions, EB-2019-0007, January 24, 2020, Appendix A

issues, such as allotment gardens in the City of Toronto and issues related to the Toronto Transit Commission. The Region of Peel proposed 41 conditions, indicating that these are "...an amalgamation of the conditions requested by Intervening Municipalities' submissions and those contained in the Region's submission dated October 15, 2019". The conditions proposed by the Region of Peel cover the following⁵⁹:

- General matters (e.g., file with the OEB and post on its company website at least 30 days in advance of construction start a Commitments Tracking Table and keep it up-to-date and advise the OEB of any changes of the status of the commitments)
- Engineering and environmental matters (e.g., continue to collaborate with the Region of Peel; provide construction drawings in advance of construction; design the pipeline in accordance with the CSA Z662; file with the OEB the Environmental Protection Plan; develop a project-specific Traffic Management Plan)
- Financial assurances (e.g., enter into an Indemnity Agreement with the Region of Peel using the same form as submitted by the City of Mississauga in its submission⁶⁰)
- Emergency response and planning (e.g., provide the Region of Peel, at least 30 days in advance of construction start, an updated project-specific Emergency Response Plan)

Imperial Oil Response to Proposed Conditions

Regarding the conditions of approval proposed by OEB staff, Imperial Oil provided its comments and proposed certain amendments to some of the conditions in the course of the interrogatory responses and in its Argument-in-Chief. OEB staff, in its submission, dated January 24, 2020 replied and did not oppose Imperial Oil's proposed amendments with exception of the proposed changes to conditions 4, 5, and 6. In its Reply Submission Imperial Oil submitted that the OEB should approve its Project subject to conditions as proposed by OEB staff. Imperial Oil expressed its view that that the conditions proposed by OEB staff "...will ensure that the recommendations of the Environmental Report are implemented and all applicable legislation is complied with, thereby protecting the environment and the interests of landowners, and ensuring that the pipeline meets all requisite technical and safety standards."⁶¹

⁵⁹ Regional Municipality of Peel, Submission EB-2019-0007, January 24, 2020, pp 3-10

⁶⁰ City of Mississauga –Final Submissions, EB-2019-0007, January 24, 2020, Appendix B

⁶¹ Imperial Oil Limited, Reply Submission, February 7, 2020, para 102, page 22

Regarding the conditions proposed by the Municipal Intervenors and Hydro One, Imperial Oil submitted that the conditions proposed by Municipal Intervenors are either outside of regulatory authority of the OEB or outside of the scope of the OEB's review of an application under sections 90 and 96 of the OEB Act, or already covered by conditions proposed by OEB staff.

Imperial Oil's position was that conditions mandating financial assurances, indemnities and insurance protections are not proper⁶² ; however, Imperial Oil confirmed that it "...remains committed to engagement with the Municipalities regarding their concerns and will adhere to all municipal permitting and approval processes applicable to the Project.⁶³"

Imperial Oil's position was that proposed conditions requiring Imperial Oil to seek municipal review of its EMP or Emergency Plans are "...not proper". Imperial Oil maintained that the TSSA and MECP have expertise and jurisdiction to ensure compliance with environmental legislation and technical and safety standards for the Project. In addition, Imperial Oil has stated that it has provided the Municipalities "...emergency response plans and will provide capacity-building opportunities to stakeholders as required, specifically to supplement already required municipal training programs."⁶⁴

Findings - Conditions of Approval

Section 23 of the OEB Act permits the OEB, when making an order, to "impose such conditions as it considers proper".

The approved Conditions of Approval are attached as Schedule B to this Decision and Order.

The OEB agrees with the amendments to the standard conditions of approval proposed by OEB staff and agreed to by Imperial Oil.

The OEB finds that the additional conditions proposed by the municipal intervenors are beyond the OEB's mandate and are overseen by other entities (e.g., TSSA). However,

⁶² Imperial Oil Limited, Reply Argument, February 7, 2020, para 87, page 19

⁶³ Imperial Oil Limited, Reply Argument, February 7, 2020, para 25, page 6

⁶⁴ Imperial Oil Limited, Reply Argument, February 7, 2020, para 23, page 5

the attached conditions of approval require that Imperial Oil acquire all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project. This would include any approvals required by affected municipalities.

With respect to the proposals that the OEB make its approval conditional upon review of the EMP, EPP and Contingency Plans, the OEB notes that it has added a condition that requires Imperial Oil to notify the OEB and all parties in this proceeding of the completion of each of the EPP, EMP and Contingency Plan documents it has committed to completing prior to the start of construction, and to make a copy of the documents available to a party upon their request.

The Municipalities requested that the OEB make its approval of the Project conditional on Imperial Oil executing financial indemnity guarantees and assurances to fully indemnify them from claims, actions, losses and costs arising from the construction, operation, decommissioning of the Project or any breach of the OEB's order. This also includes a condition that Imperial Oil maintain property insurance and liability insurance.

The OEB notes that both the OEB Act and the Environmental Protection Act impose statutory mechanisms for compensation to landowners in the event of damage. The OEB also notes that Imperial Oil stated that it has insurance coverage which includes accidental pollution related to environmental exposures.⁶⁵

⁶⁵ Imperial Oil Ltd., Reply Argument, February 7, 2020, p.19-20

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Imperial Oil Limited (Imperial Oil) is granted leave, pursuant to section 90(1) of the OEB Act, to construct approximately 63 kilometers of 12-inch diameter pipeline for transportation of refined petroleum products from its facility in the City of Hamilton to its facility in the City of Toronto, located in the City of Hamilton, the City of Burlington, the Town of Milton, the Town of Oakville, the City of Mississauga and the City of Toronto, as described in its application.
2. The OEB approves the proposed forms of easement agreement that Imperial Oil has offered or will offer to each owner of land affected by the approved pipeline route for the Project.
3. Leave to construct is subject to Imperial Oil complying with the Conditions of Approval set out in Schedule B.
4. The information which had previously been designated by the OEB as confidential on an interim basis shall be treated as confidential on a final basis.
5. Eligible intervenors shall file with the OEB and forward to Imperial Oil their respective cost claims in accordance with the OEB's *Practice Direction on Cost Awards* on or before **March 19, 2020**.
6. Imperial Oil shall file with the OEB and forward to intervenors any objections to the claimed costs of the intervenors on or before **April 6, 2020**.
7. If Imperial Oil objects to any intervenor costs, those intervenors shall file with the OEB and forward to Imperial Oil their responses, if any, to the objections to cost claims on or before **April 14, 2020**.
8. Imperial Oil shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto March 12, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Board Secretary and Registrar

SCHEDULE A- MAP OF THE PROJECT

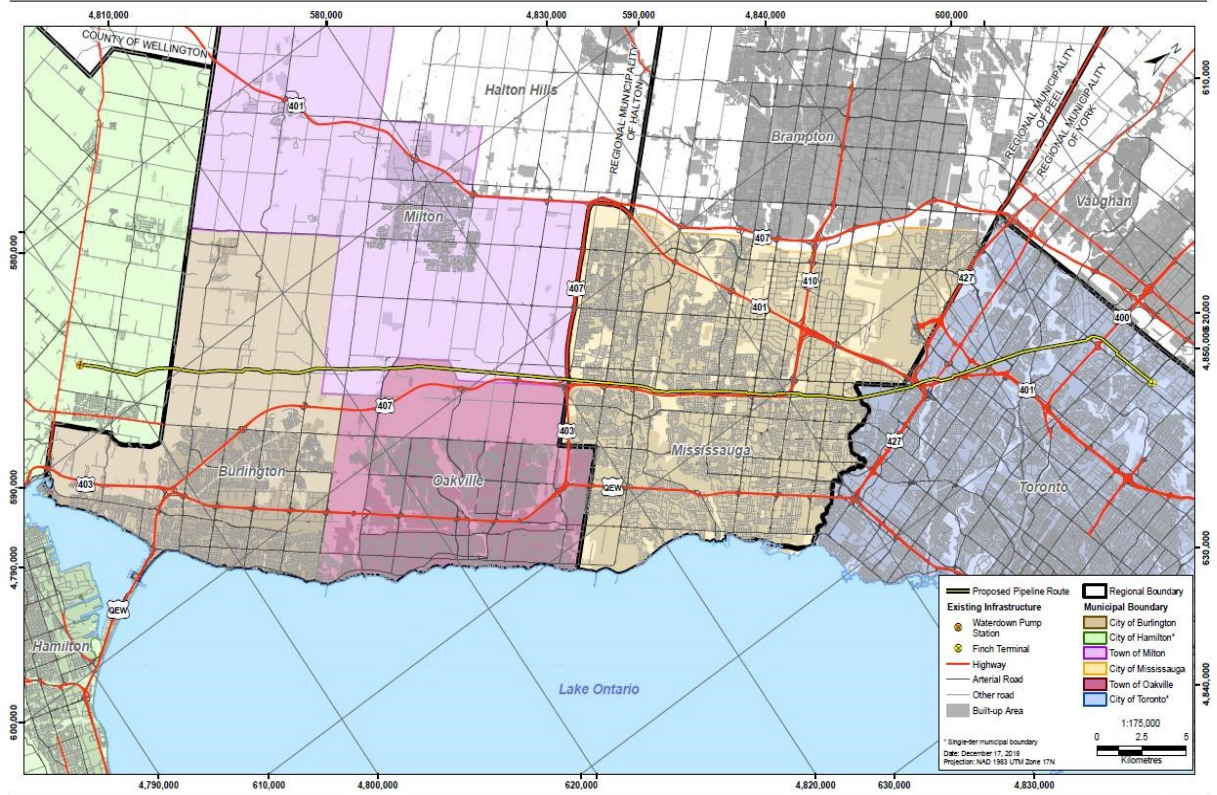
DECISION AND ORDER

IMPERIAL OIL LIMITED

EB-2019-0007

MARCH 12, 2020

Figure 2.2-1
Waterdown to Finch Project Overview



SCHEDULE B - CONDITIONS

DECISION AND ORDER

IMPERIAL OIL LIMITED

EB-2019-0007

MARCH 12, 2020

SCHEDULE B – CONDITIONS OF APPROVAL
Application under Section 90 of the OEB Act
Imperial Oil Limited
EB-2019-0007

1. Imperial Oil Limited. (Imperial Oil) shall construct the facilities in accordance with the OEB's Decision and Order in EB- 2019-0007 and these Conditions of Approval.
2. Imperial Oil shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
3. Imperial Oil shall implement all the recommendations of the Environmental Report filed in the proceeding, and implement all commitments made in response the Ontario Pipeline Coordinating Committee member review.
4. Imperial Oil shall notify the OEB and all parties in this proceeding, prior to the start of construction, of completion of each of Environmental Protection Plan (EPP) Environmental Management Plan (EMP), and Contingency Plan documents and make a copy of the documents available to a party upon their request.
5. (a) Authorization for leave to construct shall terminate 24 months after the decision is issued, unless construction has commenced prior to that date.

(b) Imperial Oil shall give the OEB notice in writing:
 - i. of the commencement of construction, at least ten days prior to the date construction commences
 - ii. of the planned in-service date, at least ten days prior to the date the facilities go into service
 - iii. of the date on which construction was completed, no later than 10 days following the completion of construction
 - iv. of the in-service date, no later than 10 days after the facilities go into service

6. Imperial Oil shall advise the OEB of any proposed-change to the OEB approved construction or restoration procedures. Except in an emergency, Imperial shall not make any such change without prior notice to, and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
7. Both during and after construction, Imperial Oil shall monitor the impacts of construction, and shall file with the OEB one paper copy and one electronic (searchable PDF) version of each of the following reports:
 - a) a post construction report, within three months of the in-service date, which shall:
 - i. Provide a certification, by a senior executive of the company, of Imperial Oil's adherence to Condition 1
 - ii. Describe any impacts and outstanding concerns identified during construction
 - iii. Describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
 - iv. Include a log of all complaints received by Imperial Oil, including the date/time a complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. Provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project
 - b) a final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. Provide a certification, by a senior executive of the company, of Imperial Oil' adherence to Condition 3
 - ii. Describe the condition of any rehabilitated land

- iii. Describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
 - iv. Include the results of analyses and monitoring programs and any recommendations arising therefrom
 - v. Include a log of all complaints received by Imperial Oil, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
- 8 Imperial Oil shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to all the appropriate stakeholders, and shall clearly post the project manager's contact information in a prominent place at the construction site.

The OEB's designated representative for the purpose of these Conditions of Approval shall be the OEB's Manager of Natural Gas Applications (or the Manager of any OEB successor department that oversees leave to construct applications).