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Re: EB-2014-0022

Ontario Energy Board
Attn: Kirsten Walli, Board Secretary
P Box 2319
27th Floor
2300 Yonge Street Toronto ON M4P 14

May 02, 2014

Dear Ms. Walli,

RE: Reply Submission to **Suncor ltr Motion by ConcernedCitizen 20140424**

Please accept this correspondence from CSLC&WAIT-PW in reply to the letter filed by Suncor on April 24, 2014 regarding the motion to require Suncor to provide full and adequate answers to Supplemental Interrogatories filed as Concerned Seniors Lambton County & WAIT-PW IR_Suncor_20140416

Two paper copies will be sent by regular mail.

PROCESS ISSUES RAISED BY SUNCOR

Issue #1: Timeliness of the Supplemental Interrogatories

1.1 From the outset, CSLC&WAIT-PW regrets creating confusion for Suncor regarding the issue of timeliness of our supplemental interrogatories. We did indeed beg the indulgence of the Board in allowing the supplemental interrogatories because, at that time, we believed that supplemental interrogatories were treated under the same time limits set by the Board in PO1 Suncor Energy 20140325. We no longer hold this belief.

1.2 Suncor notes that these “additional IRs were two weeks late”. We now believe that the timeliness concept cannot apply to supplemental interrogatories. There are two types of interrogatories – timed and supplemental. They are distinguished by their function. The timed interrogatories function to set the issues framework for the course of the hearing. They are the ‘opening arguments’. Supplemental interrogatories function to ensure that participants can obtain answers to questions that arise in the course of the Hearing. The Supplemental IRs are additional interrogatories in that they function to assist us in completing our analysis and understanding of the issues – here, pole location and grid reliability as these issues become defined through the exchange of information during the course of the Hearing. The time frame issue is clearly relevant to timed interrogatories but cannot be imposed on supplemental interrogatories. To constrain the use of supplemental interrogatories by lumping them together with timed interrogatories would render Supplemental Interrogatories of no use or force - deprived of their very function. It would prevent participants from having any assurance that answers would be forthcoming from applicants to questions that arise out of contemplation of the information that flows as the hearing progresses. In summary we now see that the Board allows two types of interrogatories – timed interrogatories, which function to enable the participants to identify issues of concern from the pre-filed evidence, and supplemental interrogatories, which function to enable further understanding of issues as the flow of evidence progresses.

1.3 In providing for Supplemental Interrogatories, the Board acts to meet its affirmative duty to ensure the hearing addresses issues of public interest. To date, the Board has not indicated that it considers fact finding processes have progressed to the point at which the issues raised are sufficiently explored through posing questions and receiving answers.

1.4 CSLC&WAIT-PW appreciates that Suncor wrote the Board to ask that it not be required to answer the Supplemental Interrogatories because Suncor, based on statements in our submission, also defined the Supplemental Interrogatories as out of time.

1.5 We seek now to correct that misunderstanding so that process issue of timeliness will no longer constrain Suncor from answering the substance of the Supplemental Interrogatories.

Issue #2: CSLC&WAIT-PW Motion to Require Suncor to answer the Suppl IR

2.1 In its letter, Suncor submits that the motion is out of order, as Suncor has not responded to the supplemental IRs, and a motion under section 29.3 can only be brought once the party receiving the IR has provided a response. Suncor has not provided a response.

2.2 We do not agree that the motion is out of order. In fact, Suncor responded to the Supplemental interrogatories by contending that both were either irrelevant to the proceedings or outside Suncor’s capacity to answer. In the document Concerned Seniors & WAIT-PW Motion to Board OEB- 2014-0422, we set forth why the supplemental interrogatories are both relevant to the hearing and within Suncor’s competence to answer.

Summary

CSLC&WAIT-PW now trusts that the process issue of timeliness raised by Suncor is no longer an obstacle to answering the two Supplemental Interrogatories. Were Suncor to provide voluntarily full and adequate answers, the motion would no longer be required and we would withdraw it.

Sincerely,

Santo Giorno