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BY E-MAIL

June 6, 2014

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Suncor Energy Products Inc.
Application for Leave to Construct Transmission Facilities
Board File No. EB-2014-0022**

Pursuant to Procedural Order No. 2 issued on May 16, 2014, please find attached Board staff's submission on the treatment of Suncor's confidential documentation in the above proceeding.

Yours truly,

Original Signed By

Leila Azaïez
Case Manager

c. All parties



Board Staff Submission

Application for Leave to Construct Transmission Line and Associated Facilities EB-2014-0022

June 6, 2014

Background to Board Staff's Submission

Suncor Energy Products Inc., ("Suncor") filed an application (the "Application") with the Ontario Energy Board (the "Board"), dated January 21, 2014 under sections 92, 96(2), 97 and 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B.

Suncor has applied for an order of the Board for leave to construct approximately 15 kilometres of 115 kilovolt electricity transmission line and associated facilities (the "Transmission Facilities") to connect Suncor's Cedar Point II Wind Energy Project to the IESO-controlled grid. Suncor is also seeking an order approving the forms of agreements with landowners and an order approving the construction of certain transmission facilities upon, under or over a highway, utility line or ditch.

During the discovery phase, Suncor filed certain confidential documentation. The Board asked in Procedural Order No.2 that Board staff and intervenors, if they so wish, make submissions on the treatment of Suncor's confidential material.

Requests for Confidentiality

By way of letter dated April 17, 2014 Suncor submitted two documents in response to two interrogatories from Board staff and Lambton County (the "County") respectively, seeking confidential treatment of both documents in their entirety.

In response to Board staff interrogatory 4(v), Suncor filed a copy of its Shared Transmission Facilities and Option Agreement with Kerwood Wind Inc., Jericho Wind Inc., and Bornish Wind LP. Suncor requested that this agreement be treated as confidential in its entirety. Suncor stated that this agreement sets out the commercial relationship between Suncor and NextEra with respect to Suncor's use of NextEra's shared transmission facilities to transmit Suncor's electricity output from its wind farm to the Hydro One grid, including the details of the cost sharing arrangements between the parties.

In response to County interrogatory 1(1), Suncor filed a copy of its Jericho Shared Transmission Facilities and Option Agreement with Jericho Wind Inc. Suncor stated that

this agreement provides similar information with respect to Suncor's use of the Jericho transmission line.

Suncor requested that it be allowed to file both agreements in confidence (collectively referred to as the "Agreements"), in their entirety, and in accordance with the Board's *Practice Direction on Confidential Filings* (the "Practice Direction"), on the basis of them being commercially sensitive. Suncor submitted that the Agreements represent private commercial arrangements between the parties and that the Agreements contain commercial, financial and technical information that if disclosed would cause harm to the competitive positions of the parties in future projects that they may wish to pursue.

Staff notes that in response to Board staff interrogatory 4(vii), Suncor filed a redacted version of the Connection and Cost Recovery Agreement ("CCRA") between Kerwood Wind Inc., Jericho Wind Inc., and Bornish Wind LP and HONI. Board staff has reviewed the redacted version of the CCRA and does not object to the redaction version of the document being.

By way of Procedural Order No. 2 and in accordance with the Practice Direction the Board asked for submissions on Suncor's request for confidential treatment of the documents filed. As noted above, Board staff does not object to the redacted version of the CCRA filed in response to Board staff interrogatory 4(vii). With respect to the Agreements, the Board made them confidential on an interim basis pending making its decision on confidentiality. The Board noted it would provide a copy of the confidential documents to any party from whom the Board has accepted an executed Declaration and Undertaking.

An intervenor, We're Against Industrial Turbines ("WAIT-PW"), by way of letter dated May 26, 2014, requested that the Board accept a modified Declaration and Undertaking noting that the person who executed the Declaration and Undertaking was not external counsel or a consultant for WAIT-PW. Suncor filed a letter objecting to the Board accepting a modified Declaration and Undertaking from WAIT-PW. WAIT-PW did not respond to Suncor's objection.

The following sets out Board staff's submission on Suncor's confidentiality request for the Agreements.

Submission

Board staff submits that the request for confidentiality of the Agreements in their entirety be denied and that Suncor be ordered to file appropriately redacted versions of the Agreements. Board staff's views and reasoning are provided below.

The Board's general policy as stated in its Practice Direction is that all evidence should be on the public record. The Practice Direction also recognizes that some information may be of a confidential nature and should be protected. Appendix A of the Practice Direction outlines some of the factors that the Board may consider in addressing the confidentiality of filings, one of which is the potential harm that could result from the disclosure of the information, including, among other factors, "whether the information is commercially sensitive".

Board staff has reviewed the Agreements and does not agree that all of the information in the Agreements is commercially sensitive. On the contrary, Board staff submits that the majority of the information found in the Agreements is standard boiler plate language that one would expect to find in any commercial contractual agreement between parties.

The Board's Practice Direction provides guidance in assessing the degree of confidentiality that should be accorded to documents. At page 2 of the Practice Direction:

The Board's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent, and accessible. The Board therefore generally places materials it receives in the course of the exercise of its authority under the *Ontario Energy Board Act, 1998* and other legislation on the public record so that all interested parties can have equal access to those materials. That being said, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-

informed, and recognizes that some of that information may be of a confidential nature and should be protected as such.

This Practice Direction seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential. The approach that underlies this Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.

Board Staff also notes that section 10 of the Board's *Rules of Practice and Procedure* and section 4 of the Board's Practice Direction set out a process for confidentiality requests which has not been followed by the applicant in this proceeding. The Practice Direction emphasizes the need to balance the protection of confidential information with the general policy that all records should be open to the public and that all proceedings should be open, transparent and accessible.

Board staff submits that Suncor has failed to adhere to the Practice Direction in that it did not make an effort to limit the scope of its request for confidentiality of the Agreements to an extent commensurate with the commercial sensitivity of the information at issue nor has Suncor clearly demonstrated how and why the disclosure of the Agreements will cause harm or prejudice. Board staff submits that the request for confidentiality of the Agreements in their entirety be denied and that Suncor be ordered to file appropriately redacted versions of the Agreements which can be placed on the public record.

All of which is respectfully submitted.