



EB-2014-0022

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S. O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by Suncor Energy
Products Inc. for an Order granting leave to construct a new
transmission line and associated facilities.

PROCEDURAL ORDER NO.4
July 15, 2014

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.

Confidential Documentation

Submissions on Confidential Documentation

In response to Board staff interrogatories dated April 3, 2014, Suncor filed and requested confidential treatment of two documents in their entirety, namely Suncor's Shared Transmission Facilities and Option Agreement with Kerwood Wind Inc., Jericho Wind

Inc., and Bornish Wind LP and Suncor's Jericho Shared Transmission Facilities and Option Agreement with Jericho Wind Inc. (collectively the "Agreements"). Suncor submitted 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.

Procedural Order No. 2 invited parties, to file submissions on Suncor's request for the confidential treatment of the Agreements, and Suncor to reply to these submissions. In accordance with the order, on June 6, 2014 and June 10, 2014 respectively, Board staff and Suncor filed a submission and reply.

On June 13, 2014, the Board issued Procedural Order No. 3 which ordered Suncor to file redacted versions of the Agreements and serve it on Board staff and the other parties. On June 17, 2014 Suncor filed redacted versions of the Agreements on the public record.

Before determining the appropriateness of the redactions in the Agreements, the Board wishes to consider as a preliminary matter, the issue of the relevance of the Agreements. The Board will therefore request submissions from Board staff and the parties on the relevance of the Agreements, and the Applicant will be permitted to file a reply to any submissions made by the Board staff and parties.

Request for Modified Declaration and Undertaking

When confidential documentation is filed during a proceeding, the Board provides a process by which parties can request access to such documentation. This process includes the filing of a Declaration and Undertaking, as outlined in the Board's *Practice Direction on Confidential Filings* (the "*Practice Direction*").

On May 16, 2014, the Board issued Procedural Order No. 2 in which it outlined the process for access to the Agreements. In Procedural Order No. 2, the Board indicated, in accordance with the Practice Direction, that when a person who is not either an external counsel or a consultant for a party requests access to a confidential version of a document, an appropriately modified version of the form of Declaration and Undertaking may be made available to that person to enable access to the confidential version. The Board also noted that any such person who wishes access to the confidential information must set out the reasons why access should be permitted.

On May 20, 2014, WAIT-PW filed a request for a modified version of the Declaration and Undertaking. On May 22, 2014, Suncor filed a letter objecting to this request. WAIT-PW did not file a Reply to the objection made by Suncor.

In its request for a modified version of a Declaration and Undertaking, WAIT-PW stated in part that “until [the] agreements are made available, it is unclear what Suncor and NextEra have agreed to and how satisfactory that agreement is to the viability of the Suncor Cedar Point transmission facility project”.

The Board only grants access to confidential information when the Board is satisfied that there will be sufficient protection for confidentiality, and sufficient potential for consequences should confidentiality be breached.

The Board notes that breaches of the Declaration and Undertaking by a solicitor could be reported to the Law Society of Upper Canada, the governing body of Ontario lawyers, which could then take appropriate disciplinary action against that solicitor. In the case of both lawyers and consultants, the Board would have the power to limit their participation in future Board proceedings if they dishonour the Declaration and Undertaking.

For persons who are neither lawyers nor consultants, a meaningful consequence, is generally not available if there is a failure to honour a Declaration and Undertaking. It is for that reason that the Board generally does not accept a Declaration and Undertaking from a person who is not a lawyer or consultant.

In the case of WAIT-PW the Board has not received a Declaration and Undertaking signed by WAIT-PW’s consultant, but rather a request for a modified Declaration and Undertaking from an individual who is a part of WAIT-PW itself. The acceptance of such a Declaration and Undertaking would be contrary to the principle that the Board has outlined above. Therefore, the Board denies WAIT-PW’s request for the acceptance of a modified version of a Declaration and Undertaking.

Participants' Requests

Letter of Comment

On July 2, 2014, an observer Doris St. Amand, filed a letter of comment. In accordance with section 23.03 of the Board's *Rules of Practice and Procedure*, Suncor is expected to address the issues raised in letters of comment, including the comments made by Ms. St. Amand.

Request for the Submission of Evidence

On July 2, 2014, WAIT-PW filed a letter asking that it be allowed to file evidence. WAIT-PW, other intervenors, and Board staff may file written evidence in this proceeding.

The Board considers it necessary to make provision for the following matters related to this proceeding.

THE BOARD ORDERS THAT:

1. Board staff and intervenors may file a submission on the relevance of the Agreements to the matters at issue in this proceeding with the Board and serve Suncor on or before **July 22, 2014**.
2. Suncor may file a reply submission and serve it on Board staff and the other parties on or before **July 30, 2014**.

All filings to the Board must quote file number EB-2014-0022, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca.

If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD

in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Leïla Azaïez at leila.azaiez@ontarioenergyboard.ca and Board Counsel, at maureen.helt@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, July 15, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary