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**BY E-MAIL**

July 22, 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. ("Suncor")  
Application for Leave to Construct Transmission Facilities  
Board File No. EB-2014-0022**

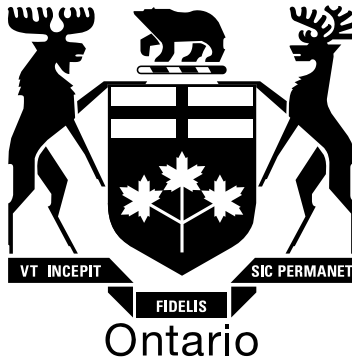
Pursuant to Procedural Order No. 4 issued on July 15, 2014, please find attached Board staff's submission on the relevance of certain agreements submitted by Suncor in the above proceeding.

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**

**July 22, 2014**

## **BACKGROUND**

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 requested 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.

## **SUBMISSION**

### **Issues**

There is only one issue in this submission: Are the Agreements relevant?

## **Scope of the Proceeding**

Board staff submits that the scope of this leave to construct proceeding is set out in the Notice of Application issued on February 18, 2014 wherein the Board stated that it will consider four issues:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service;
2. The promotion of the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario;
3. The form of agreement that Suncor Energy Products, Inc. offers to landowners affected by the route or location of the Transmission Facilities; and
4. The public interest with respect to the construction of the work upon, under or over a highway, utility line or ditch.

## **County and Board Staff Interrogatories**

During the discovery phase, Board staff submitted interrogatories that relate to the proposed transmission infrastructure and examined subjects that relate to whether the granting of a leave to construct would be in the public interest. As the System Impact Assessment of the Independent Electricity System Operator that is filed along leave to construct applications illustrates, any proposed transmission infrastructure is also considered at the system level. This systemic approach also applies to Suncor's application. Suncor's proposed transmission infrastructure cannot be taken in isolation. As stated in various parts of the pre-filed evidence, and recounted in Board staff's preamble to interrogatory 4, the proposed transmission infrastructure ties into the larger bulk system, namely the IESO-controlled grid. In this particular case, the infrastructure necessary to connect to the bulk system was itself not on the ground as noted again in staff's preamble to interrogatory 4. The map attached to the Notice of Application appropriately shows that Suncor labeled the interconnection point as "Jericho Wind Inc. Future Substation". Based on the interdependency of the proposed facilities with other future facilities outside the direct control of Suncor, interrogatory 4 (v) was asked as a matter of due diligence:

- 4 (v) Please file a copy of the agreement(s) Suncor has entered into with NextEra in respect of the necessary interconnection facilities.

The County of Lambton (the “County”) also requested information during discovery that relate to the manner in which Suncor’s proposed transmission infrastructure would tie into the larger system. The full interrogatory including preamble reads as follow:

The applicant requires the use of the Jericho Shared Transmission Facilities (Jericho Facilities) to connect the Cedar Point Project Transmission Facilities (Transmission Line) to the IESO-controlled grid. The Jericho Facilities are currently the subject of a Section 92 Application [OEB 2013-0361] by Jericho Wind, Inc., a wholly-owned subsidiary of NextEra Energy Canada, ULC. This establishes a significant level of reliance on the approval, construction and continued long term operation of the Jericho Facilities, of which both are uncertain at the time of this Application.

1. Please provide a copy of the executed agreement between the Applicant and Jericho Wind, Inc. for the use of the Jericho Facilities.

Board staff submits that the County’s interrogatory is relevant to the proceeding, and appropriately referenced the pre-filed evidence on which it was based. Board staff further submits that analogous to Board staff’s approach, the County asked this question as a matter of due diligence.

In response to the County and staff interrogatories, Suncor produced the Agreements.

### **Relevance of the Agreements**

Board staff submits that the test of relevance is whether or not the information or document in question, in this case the Agreements, relate to matters in issue in this proceeding. The principle for determining what document properly relates to the matters in issue is that it must be one which might reasonably be supposed to contain information which may directly or indirectly enable the party requiring production to advance his own case or to damage the case of his adversary, or which might fairly lead him to a train of inquiry that could have either of these consequences.<sup>1</sup>

It is Board staff’s submission that the Agreements are relevant in that they relate to the ability of Suncor to complete the leave to construct project applied for. If it were the case

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<sup>1</sup> *Reading and Bates Construction Co. v. Baker Energy Resources Corp. et al* (1988), 24 C.P.R. (3d) 66

that these Agreements were not in place or not finalized then this would result in uncertainty that could directly affect the viability of this project.

Board staff notes that once the Board grants leave to construct, a grantee has a twelve-month period to start construction. In this particular case, essential infrastructure needed for the project lies outside of Suncor's control. Board staff requested evidence to ensure that all necessary authorizations, including government permits or commercial agreements where applicable, were in place. This not only ensures that the application filed is complete and that all necessary evidence is in front of the Board, but also that the application is not premature and that the route in front of the Board is the final one. Informing the record with regards to timeliness and route is appropriate as these issues could make an application moot if circumstances so warrant, and could in certain cases require an amended Notice of Application, a process that would be costly to all ratepayers.

Further, Rule 27.02 of the Board's Rules of Practice and Procedure provide that where a party contends that an interrogatory seeks information that is not relevant, the party can refuse to answer, setting out specific reasons in support of that contention. Board staff submits that Suncor did not object to production and saw no issue with respect to relevance otherwise it could have raised it. The Rules specifically contemplate such a scenario yet no objection was filed.

Lastly, Board staff submits that the Board has been interested in reviewing forms of option agreements in other proceedings. For example in Grand Renewable Wind LP EB-2011-0063 the Board stated at paragraph 68:

The Board notes that GRWLP indicated in its Argument in Chief that the terms of the ORC Option Agreements are currently being negotiated between the ORC and GRWLP's parent company, Samsung Renewable Energy Inc. ("SRE"). The Board also notes that all commercial terms have been agreed to between GRWLP and ORC, with the exception of a few real estate specific clauses, which are being negotiated in order to satisfy legal requirements for leasing land from the government.

Board staff submits that the Board has consistently allowed this type of information to form part of the public record in the past.

In summary, Board staff submits that the Agreements are relevant to the matters at issue in the proceeding, and that Suncor's unique circumstances regarding interconnecting to non-existent infrastructure required further evidence. Board staff submits that the sole purpose of requesting the Agreements is to ensure that due care has been exercised in interconnecting the proposed infrastructure with the IESO-controlled grid.

All of which is respectfully submitted.