



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.

BEFORE: Ken Quesnelle
Presiding Member and Vice-chair

Ellen Fry
Member

Peter Noonan
Member

**Decision on Relevance of Certain Agreements
Filed in Response to Interrogatories
and
Procedural Order No.5**

August 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 (“the Act”). 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.

Background

In response to Board staff and intervenor interrogatories¹, 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"). Kerwood Wind Inc., Jericho Wind Inc., and Bornish Wind LP are all subsidiaries of NextEra Energy Canada Inc., and are involved in building certain transmission facilities. Suncor plans to connect Suncor's Cedar Point II Wind Energy Project to the provincial grid through the facilities to be owned and operated by Kerwood Wind Inc., Jericho Wind Inc. and Bornish Wind LP.

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 Procedural Order No. 2, 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 on the public record and serve them on Board staff and the other parties. On June 17, 2014 Suncor filed redacted versions of the Agreements on the public record.

In Procedural Order No. 4 issued on July 15, 2014, the Board invited submissions on the relevance of the Agreements, and made provisions for submissions by the parties. Board staff filed a submission on July 22, 2014, and Suncor replied on July 29, 2014. No other party filed submissions on this matter.

Board staff submitted 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.

¹ Board staff interrogatory 4 (v) filed on April 3, 2014 and County of Lambton interrogatory 1 filed on April 1, 2014

Board staff argued that the Agreements are relevant in that they relate to the ability of Suncor to interconnect its project to the provincial grid, and speak to the completeness of the leave to construct application. Board staff submitted that it requested production of the Agreements to ensure that there is evidence on the record demonstrating that the necessary authorizations are in place. Board staff argued that if the Agreements were not in place then the Board should not grant the leave to construct. Further Board staff submitted that without the Agreements in place, uncertainty regarding connection to the grid may result, which could potentially lead to the postponement of the leave to construct process, and ultimately result in added costs.

In reply, Suncor acknowledged the relevance of the Agreements. Suncor stated that “the fact that there are Agreements in place with the NextEra-controlled counterparties to permit electricity to flow from Suncor’s Project to the provincial grid is relevant to this proceeding”². Suncor further submitted that the redacted versions of the Agreements are evidence of the existence of the Agreements and, as such, provided, in conjunction with the evidence previously filed, the necessary assurance that Suncor’s project can be appropriately integrated into the provincial grid.

However, Suncor noted that since it was applying as non-regulated entity, it would pay for its proposed project and pay for access to third party enabling transmission facilities. Consequently, Suncor argued that certain redacted information, such as the detail of the commercial terms contained in the Agreements, was not relevant to this proceeding.

Board Findings

Section 96(2) of the Act requires the Board to consider “...Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources”. In considering this factor in relation to the Transmission Facilities, the Board considers whether the Transmission Facilities are required in order to convey the energy from the renewable source (the Cedar Point II Wind Energy Project) to the provincial electricity grid.

The evidence indicates that the Agreements are required in order to provide the means to convey the renewable energy to the provincial grid. Accordingly, the Board finds that

² Suncor reply submission dated July 29, 2014 at page 2

the existence of the Agreements is relevant to its consideration of the factors in section 96(2) as evidence of the existence of the Applicant's ability to connect the generation facility to the provincial grid.

However the Board does not find the particular terms of the Agreements to be relevant to the Board's decision in this case.

The Board considers that the redacted versions of the Agreements as filed are sufficient to establish the existence of the Agreements. Accordingly, the Board does not find it necessary to consider the appropriateness of the claims for confidentiality of the specific redactions that have been made. The Board accepts the redacted versions of the Agreements as filed. The un-redacted versions of the Agreements are excluded from the record.

Procedural Matters

On July 25, 2014, WAIT-PW filed the following documents with the Board:

1. Ontario's Long Term Energy Plan
2. The Ontario Auditor-General's 2011 Report
3. Capacity Factor of Ontario Wind Energy Generating Facilities, authored by Dr. John Harrison
4. Wind and the Electrical Grid, 2014, prepared by the Ontario Society of Professional Engineers
5. Former Minister of Energy, October 10, 2013 Public Comments
6. Wind and Nuclear and the Increasing Irrelevance of Capacity Factor in Ontario – 2014 February The Don Jones Articles, authored by Don Jones, P.Eng.
7. Tutorial of Wind Turbine Control for Supporting Grid Frequency through Active Power Control, prepared by the National Renewable Energy Laboratory

The Board does not consider it necessary to provide for the filing of interrogatories on the above documents given the fact that these are documents in the public domain that have been prepared by third parties. The Board considers that the evidentiary record in this proceeding is now closed.

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

THE BOARD ORDERS THAT:

1. Suncor shall file its argument-in-chief, if any, with the Board and deliver to all parties on or before **August 25, 2014**.
2. Intervenors and Board staff shall file any argument with the Board, and copy all parties, on or before **September 2, 2014**.
3. Suncor shall file any reply submission with the Board and copy all parties on or before **September 8, 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

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, August 15, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary