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Our File No. 134380

**VIA RESS, EMAIL AND COURIER**

Ontario Energy Board  
2300 Yonge Street  
Suite 2700  
Toronto Ontario  
M4P 1E4

Attention: Kirsten Walli,  
Board Secretary

Dear Ms. Walli:

**Re: Suncor Energy Products Inc. ("Suncor") – Argument-in-Chief  
Board File No. EB-2014-0022**

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Pursuant to Procedural Order No. 5, please find enclosed Suncor's Argument-in-Chief.

Yours sincerely,

**FOGLER, RUBINOFF LLP**

Thomas Brett  
TB/dd  
Encls.  
CC: All Parties

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

**AND IN THE MATTER OF** an application by Suncor Energy Products Inc. for an Order or Orders pursuant to Section 92 of the *Ontario Energy Board Act, 1998* (as amended) granting leave to construct transmission facilities in the Municipality of Lambton Shores, the Town of Plympton-Wyoming, and the Township of Warwick, all in the County of Lambton, Ontario.

**APPLICANT'S ARGUMENT-IN-CHIEF**

**August 25, 2014**

**A. INTRODUCTION**

1. These submissions are filed on behalf of Suncor Energy Products Inc. ("**Suncor**" or the "**Applicant**") in EB-2014-0022 (the "**Application**"). In the Application, Suncor seeks leave to construct under Section 92 of the *Ontario Energy Board Act* (the "**OEB Act**") an electricity transmission line and a collector/transformer substation (the "**Proposed Facilities**") that will help connect the Cedar Point II Wind Energy Project (the "**Project**") to the IESO-controlled grid. These facilities will connect to certain transmission facilities (owned by Jericho Wind, Inc.) that were recently approved by the Ontario Energy Board (the "**Board**") in EB-2013-0361 (the "**Jericho Facilities**"). The Jericho Facilities will convey the electricity to the Bornish TS station, and then through certain other transmission facilities (the "**Shared Transmission Facilities**") to the IESO-controlled grid. That pathway permits electricity generated by the Project to enter the IESO-controlled grid. The Shared Transmission Facilities are described in the EB-2013-0040 Application for Leave to Construct Transmission Facilities by Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc. ("**Jericho**"), all of which are controlled by NextEra Energy Canada ("**NextEra**"). That application was approved by the Board on November 12, 2013. A schematic diagram of the pathway from the collector/transformer

substation to the IESO-controlled grid is at Exhibit B, Tab 2, Schedule 5 of the Application.

2. In order to secure this pathway to the IESO-controlled grid, Suncor has obtained options from NextEra to interconnect with, and utilize as licensee, the Jericho Transmission Facilities, and the Shared Transmission Facilities. These arrangements, incorporated in substantial commercial agreements, provide Suncor, upon taking up of the options, with capacity on those transmission facilities sufficient to convey the electricity from the Project to the IESO-controlled grid. Suncor plans to exercise those options once it has received the required approvals for the Project and the Proposed Facilities. Redacted versions of the Agreements are in evidence.
3. The Applicant also seeks Board approval under Section 97 of the OEB Act for the form of land agreement that has been offered to landowners affected by the proposed transmission facility locations and routing, as well as for an order under Section 101 of the OEB Act approving the construction of transmission facilities upon, under or over a highway, utility line or ditch.
4. The Applicant has, through its pre-filed evidence and interrogatory responses, provided detailed, comprehensive and specific information in support of the Application. The evidence demonstrates that the public interest test for leave to construct under Section 96(2) of the OEB Act has been met and that the proposed transmission facility locations and route are appropriate. Accordingly, the Applicant submits that leave to construct the proposed transmission facilities should be granted for the following reasons:
  - (a) the interests of consumers with respect to prices are protected as the costs of the facilities, including interconnection, will not be passed onto consumers through electricity rates;
  - (b) based upon the Independent Electricity System Operator's ("IESO") System Impact Assessment ("SIA") report, the connection of the Project to the IESO-controlled grid by means of the proposed transmission facilities will not have a material adverse impact on the reliability of the integrated power system;

- (c) based upon the Hydro One Networks Inc.'s ("**Hydro One**") Customer Impact Assessment ("**CIA**") report, the connection of the Project to the Hydro One transmission system by means of the proposed transmission facilities will not have any adverse impact on the Hydro One transmission customers in the area;
- (d) the proposed transmission facilities are required to convey electricity from the Applicant's renewable energy generating facility to the IESO-controlled grid and are thereby consistent with the Province of Ontario's policy of promoting renewable energy; and
- (e) the location of the proposed substation and the routing of the proposed transmission line on private lands are on the consent of each relevant landowner.

## **B. APPLICATION**

5. In the Application, Suncor has sought leave to construct electricity transmission facilities comprised of:
  - (a) a collector/transformer station (the "**Transformer Station**") located on Parcel PIN 430310087, Partial Lot 8, Concession 16, Township of Bosanquet, in the Municipality of Lambton Shores, at which power from the 34.5 kV collection system, which gathers the electricity from the Project will be stepped up from 34.5 kV to 115 kV transmission line voltage;
  - (b) a 15 km single circuit 115 kV transmission line (the "**Transmission Line**"), connecting the Transformer Station with a station to be built as part of NextEra's Jericho Transmission Facilities (the "**Jericho Substation**"), which was approved by the Board on May 6, 2014 (EB-2013-0361). The Transmission Line will connect to the high voltage side of the Substation through a 115 kV circuit breaker and related equipment, located within the Substation.
6. Under a separate application approved by the Board on November 12, 2013 (EB-2013-0040), Jericho together with Bornish Wind, LP ("**Bornish**") and Kerwood Wind, Inc. ("**Kerwood**") as co-owners (together, the "**Co-owners**"), were granted leave to

construct the Shared Transmission Facilities. The Jericho Transmission Facilities and the Shared Transmission Facilities, together with Suncor's applied for facilities will enable Suncor to convey electricity from the Project to the IESO-controlled grid. The facilities that were approved in the Co-owners' LTC Application include the Bornish Customer Switching Station (to which the Jericho Transmission Facilities will connect), the Parkhill Customer Transformer Station and a transmission line connecting the Bornish Customer Switching Station to the Parkhill Customer Transformer Station (all of which facilities comprise the Shared Transmission Facilities), each as described in the EB-2013-0040 Application. The Parkhill Customer Transformer Station will be connected to the IESO-controlled grid at Hydro One's planned Evergreen Switching Station, which will sectionalize Hydro One's circuit B562L between Bruce A TS and Longwood TS. As noted above, a schematic diagram of the facilities is shown at Exhibit B, Tab 2, Schedule 5 of the evidence.

7. As the Applicant will be both a transmitter and a generator and will be transmitting electricity only for the purpose of conveying electricity to the IESO-controlled grid, the Applicant relies upon the exemption from the requirement to obtain a transmission license as set out in Section 4.0.2(1)(d) of *Ontario Regulation 161/99*.

#### **C. LEGISLATIVE FRAMEWORK**

8. The Application is brought under Section 92(1) of the *OEB Act*, which provides that:

"No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection."

9. Section 96 of the *OEB Act* sets out the relevant test for an application under Section 92:

- "(1) If, after considering an application under sections 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.
- (2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or

reinforcement of the electricity transmission line or electricity distribution line or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
  2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources."
10. As the Board has noted in several comparable cases, its jurisdiction in considering an Application for leave to construct the Proposed Transmission Facilities is limited to the application of the public interest test set out in Section 96(2), namely to a consideration of the interests of consumers with respect to prices, the interests of consumers with respect to the reliability and quality of electricity service, and the promotion of the use of renewable energy sources consistent with government policy. The Board's jurisdiction on the Application is also limited to the Proposed Transmission Facilities. The associated wind generation facility and its 34.5 kV collector system are beyond the scope of the proceeding.
11. In Procedural Order No. 1, the Board acknowledged its limited scope of review under Section 92. The Board stated that matters relating to environmental issues, land-use issues, land valuation, health and aesthetic issues are not within the scope of the Board's jurisdiction. Rather, the Board noted, environmental issues are considered within the scope of the Ministry of the Environment's Renewable Energy Approval ("REA") process.
12. The scope of the Board's jurisdiction under Sections 92 and 96 of the *OEB Act*, in these proceedings, is also affected by the Applicant's reliance on the rights granted under Section 41 of the *Electricity Act, 1998* (the "*Electricity Act*"), relating to the use of public highways for the purpose of a transmission system.
13. Specifically, while Suncor has proposed locating its Transmission Line entirely on private lands on parcels which it has leased from landowners, the line will of necessity cross public roads or highways in several locations. In proposing to cross municipal rights-of-way ("ROWS"), the Applicant has indicated that it is relying upon its rights

under Section 41 of the *Electricity Act*. The Applicant submits that the Board's consideration of the public interest under Sections 92 and 96 in respect of the routing of the Transmission Line is subject to those rights.

14. As Section 41 of the *Electricity Act* provides transmitters and distributors with significant rights with respect to the construction of electricity transmission and distribution systems under, over or on any public street or highway. Under Section 2(1) of the *Electricity Act*, a transmitter means "a person who owns or operates a transmission system". The Applicant will own and operate a transmission system. As such, the Applicant is a transmitter under Section 41 of the *Electricity Act* and has the statutory rights granted under Section 41 of the *Electricity Act*.
15. As a transmitter, the Applicant under Section 41(1) of the *Electricity Act* may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers "necessary for the purpose of its transmission system, including poles and lines". Subsection (2) provides that a transmitter may inspect, maintain, repair, alter, remove or replace any structure, equipment or facilities constructed or installed under Subsection (1). Subsections (3) and (4) grant rights of entry for transmitters and their employees and agents. Most significantly, Subsection (5) provides that "the exercise of such powers under (1), (2) and (3) does not require the consent of the owner of or any other person having an interest in the street or highway".
16. Subsection 41(9) of the *Electricity Act* states that the location of any structures, equipment or facilities constructed or installed under Subsection (1) shall be agreed on by the transmitter and the owner of the street or highway and, in the case of disagreement, shall be determined by the Board. However, as Section 92 of the *OEB Act* (in the case of a transmission line greater than 2 km in length) already provides a statutory process to establish the transmission line's location, Subsection 41(10) provides that Subsection (9) does not apply if Section 92 of the *OEB Act* applies so as to require leave to construct.
17. It is important to note that Subsection 41(10) of the *Electricity Act* in the case of transmission lines only makes inapplicable the process under Subsection (9). This is because, with the Board's powers established under Section 92 of the *OEB Act*,

Subsection 41(9) would otherwise be redundant. Subsection 41(10) only affects Subsection 41(9), being the process before the Board. Subsection 41(10) does not amend or affect the rights granted to transmitters in Subsections 41(1) to 41(8), or render those provisions inapplicable. As such, the rights granted to transmitters under Subsections (1), (2) and (3) (location, ongoing rights to maintain and entry) remain in effect, as does the right to do so without the owner's consent under Subsection (5).

18. As a result, the application of Section 92 of the *OEB Act* does not diminish the Applicant's rights to cross road allowances. Given Section 41, with respect to location of the Transmission Line, the question before the Board under Section 92 is not whether the Applicant has a right to cross the road allowance or whether it can cross the road allowance. Rather, the question for the Board is only with respect to where the Transmission Line will cross the road allowances, which is in turn largely determined by the route of the line.
19. Based on the foregoing, the scope of the Board's inquiry in respect of Section 92 in the present proceeding is whether the Proposed Transmission Facilities satisfy the public interest test established under Section 96(2) of the *OEB Act*.

#### **D. PUBLIC INTEREST CONSIDERATIONS**

##### **Interests of Consumers with respect to Prices and Project Need**

20. Section 96(2) of the *OEB Act* requires the Board, in applying the public interest test, to consider the interests of consumers with respect to prices. The *Electricity Act* defines "consumer" to mean a person who uses, for the person's own consumption, electricity that the person did not generate. The Proposed Transmission Facilities will not directly serve any "consumers" - they will be used only to convey electricity from the Applicant's wind generation facility to the Hydro One transmission system which forms part of the IESO-controlled grid. As indicated in the Application at Exhibit B, Tab 2, Schedule 1, paragraph 9, and as required by its FIT Contract, the costs of constructing and operating the Proposed Transmission Facilities will be the responsibility of and will be paid for entirely by the Applicant. These costs will not be passed on to consumers through



transmission rates. The pricing available under the OPA's form of FIT Contract is standardized and does not vary based on the particular transmission or interconnection costs that an individual supplier incurs for purposes of its generation facility. As such, the Proposed Transmission Facilities will not have an impact on transmission rates or prices in Ontario.

21. Although "project need" is not expressly mentioned in Section 96(2) of the OEB Act as a consideration for the Board, in circumstances where the applicant is seeking to recover its project costs from consumers through transmission rates the Board will typically consider whether the additional costs to ratepayers are justified by the need for the project. In such circumstances, the Board will also consider the various routing alternatives to ensure that the selected route is the most cost effective from a ratepayer perspective. In the present Application, as noted, all of the costs of the Proposed Transmission Facilities are being paid for by the Applicant. In Section 92 applications for non-rate-regulated transmitters that are connecting generation to the IESO-controlled grid, the Board is typically satisfied as to the need for the transmission facilities where there is evidence of a power purchase agreement with the OPA.<sup>1</sup>

#### **Interests of Consumers with respect to Reliability and Quality of Electricity Service**

22. As noted above, the Proposed Transmission Facilities will not directly serve any "consumers". The only potential impacts on the interests of consumers with respect to reliability and quality of electricity service would, therefore, be as a result of impacts from the Proposed Transmission Facilities on Hydro One's transmission system or the IESO-controlled grid, which in turn directly and indirectly serve consumers. Any such potential impacts have been considered through the IESO's system impact assessment process and Hydro One's customer impact assessment process and will be addressed on an ongoing basis through the terms of the connection agreement that will govern the

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<sup>1</sup> See, for example, Grand Renewable Wind LP, Decision and Order dated December 8, 2011 at pp. 11-12 (EB-2011-0063), South Kent Wind LP, Decision and Order dated October 11, 2011 at pp. 3-4 (EB-2011-0217), McLean's Mountain Wind LP, Decision and Order dated June 28, 2012 at p. 5 (EB-2011-0394), Summerhaven Wind LP, Decision and Order dated November 11, 2011 at p. 3 (EB-2011-0027), and Jericho Wind, Inc., Decision and Order dated May 6, 2014 (EB-2013-0361), and Bornish Wind, LP, Kerwood Wind, Inc., and Jericho Wind, Inc., Decision and Order dated November 12, 2013 (EB-2013-0040).

relationship between NextEra and Hydro One, which will be based on the Board's prescribed form of agreement.

23. Suncor received a Final System Impact Assessment ("SIA") Report on June 4, 2012. This report concluded that the proposed connection of the Project to the Shared Transmission Facilities is expected to have no material adverse impacts on the reliability of the integrated power system. The IESO therefore recommended that a Notification of Conditional Approval for Connection be issued. The Notification was issued to Suncor concurrently with the Final Report. This report is found at Exhibit H, Tab 2, Schedule 1.
24. Suncor received a final Customer Impact Assessment ("CIA") Report on June 8, 2012 from Hydro One in respect of the Proposed Transmission Facilities. This report concludes that electricity from the Project facilities can be conveyed to the IESO-controlled grid through the proposed Transmission Facilities, the Jericho facilities, and the Shared Transmission Facilities, and subject to the requirements specified in the Report, without adverse impacts on area customers. This report is found at Exhibit H, Tab 3, Schedule 1.

#### **Promotion of Renewables Consistent with Government Policy**

25. The Government of Ontario enacted the Green Energy and Green Economy Act, 2009 to increase renewable energy generation and promote the creation of clean energy jobs. Under this legislation, the Minister of Energy directed the OPA to develop the FIT Program to procure energy from renewable energy sources. The procurement of renewable energy in Ontario is guided by *Ontario's Long-Term Energy Plan* (the "LTEP"). Under the 2010 LTEP, the Government of Ontario committed to putting in place 10,700 MW of non-hydro renewable energy capacity (wind, solar and bioenergy) as part of the supply mix by 2018. Under the 2013 LTEP, the Government of Ontario reiterated its commitment to renewable energy and has targeted capacity of 10,700 MW of non-hydro renewable capacity by 2021 and total renewable capacity of 20,000 MW by 2025. The FIT Program has been the centerpiece of the Government's strategy for achieving this renewable energy target to date. The Government's efforts to increase renewable energy generation have also been closely tied to the Government's

commitment to phasing out coal generation in Ontario by 2014. The Province of Ontario made this commitment for purposes of reducing Ontario's carbon emissions and its impact on climate change, as well as for reducing local and regional air pollution and related health impacts.

26. The Applicant entered into a 20-year contract with the OPA for its wind energy generation facility under the FIT Program in July 2011 (the "**FIT Contract**"). Suncor's Project will further the Government of Ontario's objective of increasing the amount of renewable energy generation that forms part of Ontario's energy supply mix. In particular, the Project will contribute approximately 100 MW of renewable energy generation capacity towards this objective. The Proposed Transmission Facilities are required to convey the electricity generated by this facility to the IESO-controlled grid so as to enable the Applicant to realize this objective, consistent with the Province's renewable energy policies.

#### **Facility Routing and Location**

27. As discussed in Exhibit B, Tab 4, Schedule 1 of the evidence, at a high level, Suncor decided that the location of its Project, and NextEra's Bornish, Jericho, and Adelaide projects, relative to the IESO-controlled grid, suggested that the most economic, least intrusive path for electricity generated by the Project to the IESO grid was through NextEra's proposed transmission facilities, including the Shared Transmission Facilities, and the Jericho Transmission Facilities.

With respect to the best route for the transmission line from Cedar Point Transformer Station to the Jericho Station, Suncor identified and considered several alternative routes. Suncor selected its preferred route, following extensive consultations with members of the community, municipal officials, Hydro One and other stakeholders, as well as comprehensive technical and environmental reviews. As part of its Renewable Energy Approval ("**REA**") process, Suncor issued notices, delivered presentations, participated in public meetings, and met with local government officials. During the course of these

consultations, Suncor shared information and received feedback concerning the potential routes for the transmission facilities needed to connect the Project to the Jericho Station. This feedback was considered, together with Suncor's technical and environmental reviews, in order to help identify the range of transmission options available to Suncor and any relevant concerns.

Through this process, as noted below, Suncor identified several potential transmission routes, as well as various constraints on these potential routes. Suncor then evaluated the two most attractive route options in detail (see below) and the related constraints and determined that the preferred Transmission Line route is the one proposed for the Proposed Transmission Facilities. For reason of cost-effectiveness and ease of service, Suncor has chosen to use an overhead transmission line.

Suncor initially considered several alternatives for the Transmission Line. The principal alternative route had the Transmission Line starting at the same substation location, travelling East along the Cedar Point Line right of way for approximately 6100m to an abandoned and removed rail line where the transmission line would travel North East across private land for approximately 4800m . The abandoned rail line splits the land parcels in the area and runs past the Jericho Substation location. This alternative route would have followed a natural property line boundary and was a direct route (approximately 11,000m) compared to the preferred path of approximately 15,000m. However, Suncor does not have property control along the abandoned rail line. Moreover, the alternative placement would also impact farming operations as the Transmission Line would require crossing lands at an angle and structures would interrupt farming operations significantly.

28. The proposed location of the Project, as well as the proposed Transmission Line, are described in Exhibit B, Tab 2, Schedule 3 and are depicted in the detailed maps provided in Exhibit B, Tab 2, Schedule 4 of the Application, respectively. Suncor proposed minor changes to the proposal to avoid provincial wetlands, by way of a letter to the Board dated July 15, 2014 and Attachment, consisting of an amended Exhibit B, Tab 2, Schedule 1, page 2 of the evidence.

29. Suncor submits that the route of the Proposed Transmission Facilities is appropriate and the proposed route offers a number of advantages over the alternative routes that were considered. Accordingly, the Applicant submits that the route and Proposed Transmission Facility locations should be approved.

#### **Land Matters and Forms of Land Agreements**

30. As part of the Application, the Applicant seeks an order pursuant to Section 97 of the OEB Act, which provides that in an application under Section 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.
31. To support the Application, the Applicant has also filed detailed descriptions of the land area and land rights required, as well as the land acquisition process for the Proposed Transmission Facilities (Exhibit F, Tab 1, Schedule 1). The form of land agreement for which the Applicant seeks approval is provided in Exhibit F, Tab 2, Schedule 1 of the Application.

#### **E. CONCLUSIONS**

32. The construction and operation of the Proposed Transmission Facilities will not affect the interests of consumers with respect to prices because the facilities will be paid for entirely by the Applicant and will not be recovered through transmission rates in Ontario. The Proposed Transmission Facilities are consistent with the policies of the Government of Ontario with respect to the promotion of the use of renewable energy sources.
33. Through the impact assessments undertaken by Hydro One and the IESO, the results of which were included in the pre-filed evidence, the Applicant has demonstrated that the Proposed Transmission Facilities will not adversely impact the interests of consumers with respect to reliability or the quality of electricity service.

34. The Applicant has also demonstrated that the route for the Proposed Transmission Facilities, including the specific crossings of the road allowances, are appropriate. The route offers clear advantages over other alternatives considered and the specific locations proposed for transmission structures have been refined based on consultations with Hydro One and Lambton County.
35. For the reasons set out herein, we respectfully request that the Board grant to the Applicant leave to construct the Proposed Transmission Facilities pursuant to Section 92 of the *OEB Act*, along with such other relief as requested in the Application.

All of which is respectfully submitted, this 25<sup>th</sup> day of August, 2014.

**SUNCOR ENERGY PRODUCTS INC.**

**By its counsel,**

**Fogler, Rubinoff LLP**

  
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Tom Brett