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**Susan Frank**

Vice President and Chief Regulatory Officer  
Regulatory Affairs

BY COURIER

September 24, 2014

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, ON, M4P 1E4

Dear Ms. Walli:

**EB-2014-0022 – Suncor Energy Products Inc. s92 Application for Leave to Construct Transmission Facilities – Hydro One Networks' Interrogatory Responses**

In response to the Board's Procedural Order No.6 issued September 5, 2014, please find attached Hydro One Networks' written responses to interrogatories regarding an application by Suncor Energy Products Inc. for an order or orders granting leave to construct transmission facilities to connect Suncor's Cedar Point II Wind Energy Project to the IESO-controlled grid, and for an order approving the forms of agreements that have been or will be offered to affected landowners.

An electronic copy of the submission has been filed using the Board's Regulatory Electronic Submission System.

Sincerely,

ORIGINAL SIGNED BY SUSAN FRANK

Susan Frank  
Attach.

**Ontario Energy Board (Board Staff) INTERROGATORY # 1**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment**
- b. Hydro One Submission dated September 10, 2014**
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility**
- d. Staff IRR 7 (ii) on Crossings**
- e. Suncor Argument-in-chief dated August 25, 2014**

**Preamble:**

The June 8, 2012 Customer Impact Assessment at reference (c), which is in the form of an addendum to the Suncor Cedar Point II WPP & NextEra Adelaide/Bornish/Jericho Wind Energy Centres, states in its disclaimer the following:

This Customer Impact Assessment was prepared based on information available about the connection of the proposed Suncor Energy Products Inc. –Cedar Point II Wind Power Project. It is intended to highlight significant impacts, if any, to affected transmission customers early in the project development process and thus allow an opportunity for these parties to bring forward any concerns that they may have. Subsequent changes to the required modifications or the implementation plan may affect the impacts of the proposed connection identified in Customer Impact Assessment. The results of this Customer Impact Assessment are also subject to change to accommodate the requirements of the IESO and other regulatory or municipal authority requirements.

Hydro One shall not be liable to any third party which uses the results of the Customer Impact Assessment under any circumstances whatsoever for any indirect or consequential damages, loss of profit or revenues, business interruption losses, loss of contract or loss of goodwill, special damages, punitive or exemplary damages, whether any of the said liability, loss or damages arises in contract, tort or otherwise. Any liability that Hydro One may have to Suncor Energy Products Inc. in respect of the Customer Impact Assessment is governed by the Agreement between:

1. Suncor Energy Products Inc. and Hydro One dated February 14, 2012.

The CIA concluded that no adverse impact will result from the incorporation of the Cedar Point project and further highlighted that Suncor and the other project entities need to install specified system facilities. More specifically the CIA states in part in Conclusions and Recommendations section that:

This Addendum: Customer Impact Assessment (CIA) presents results of short-circuit and voltage performance study analyses. The report has confirmed that CPWP can be

1 incorporated into the NWEAC without adverse impact on existing customers supplied from  
2 Bruce A TS and Longwood TS and in the local electrical area provided that the required  
3 facilities are installed. In addition to the facilities required by the IESO by issue of the  
4 original SIA's and their subsequent Addendums [...] and required by the original CIA,  
5 CPWP and NWEAC are required to install the following facilities as part of their  
6 connection:

- 7 • Connection facilities at Parkhill CTS must have the capability to operate continuously  
8 at a maximum operating voltage of at least 570 kV.
- 9 • Fully duplicated protection and telecommunication systems must be installed as  
10 outlined in the Transmission System Code.
- 11 • SCADA facilities to allow transmission of generation facility components: i.e. status,  
12 measurement quantities & alarms, as outlined in the IESO's SIA and Hydro One's  
13 planning specification for the connection of CPWP.

14  
15 Facilities to permit the above work must be provided.

16 All customers are required to check to ensure that the equipment and grounding system at  
17 their stations/facilities meet the expected increase in fault level.

18  
19 Hydro One submits in its September 10, 2014 submission that:

- 20 • It requires a signed agreement with Suncor;
- 21 • There are important operational considerations that have not been resolved;
- 22 • That Suncor is not a licensed distributor or transmitter and therefore would run, in the  
23 absence of an agreement with Hydro One, in an operational setting that is unclear;  
24 and
- 25 • A precedent exists where the Board deferred its decision to grant the leave to  
26 construct until concerned parties reached an agreement.

27  
28 With respect to costs, it appeared from responses to the interrogatories that negotiations  
29 had in fact taken place and that Hydro One could provide some clarity. Suncor stated in  
30 response to staff interrogatories 5(i) and 5(ii) that:

31  
32 i. The CCRA with HONI requires the project proponents to pay for the full cost of the  
33 installation of the Evergreen Switching Station. Thereafter, HONI will be responsible to  
operate and maintain that facility, and so will be responsible for any costs associated with the  
facility after construction. While this cost would be expected to be recovered from the  
Ontario rate base, Suncor does not believe this to be a material cost. As the operator, HONI  
would be the best party to provide any further details on this question. The cost of the  
remaining transmission infrastructure is the subject of the agreement between NextEra and  
Suncor, and it provides for the costs of all phases (development, construction, operations, and  
decommissioning) to be borne by NextEra and Suncor, as applicable.

ii. All costs related to the ongoing operation and maintenance of the Transmission Facilities will  
be paid for by Suncor.

1 In response to staff IR 7(ii), Suncor indicated that it was concerned about costs associated  
2 with crossings, and highlighted its ongoing negotiations with various actors, Hydro One  
3 was not one of them.

- 4
- ii. Suncor is concerned about costs associated with crossings, specifically requests for unreasonable heights above road travelled portions of the road or specific requests to bury transmission lines to cross infrastructure. Suncor has addressed these concerns by meeting with the owners of road allowances (Municipality of Lambton Shores, County of Lambton, and MTO) impacted by the proposed Transmission line to understand their concerns and determine their permitting processes. Suncor has also ensured conservation authorities and the Municipal staff are aware of our proposed project route and to determine what processes are required for crossing drains.

5  
6  
7 In its submission, Suncor noted at paragraphs 32, 33 and 34 that:

- 8 • The construction and operation of the proposed Transmission Facilities will not  
9 impact prices as Suncor will absorb all costs;
  - 10 • That the SIA and CIA demonstrated that the proposed Transmission Facilities will not  
11 adversely impact the interests of consumers with respect to reliability or quality of  
12 service; and
  - 13 • The location of transmission structures, including over crossings, has been refined  
14 based on consultations with Hydro One and Lambton County.
- 15
- 16 i. Please reconcile Suncor's submission that the interests of consumers with respect to  
17 reliability and quality of service are not negatively impacted by the proposed  
18 facilities, the conclusion contained in the CIA of June 8, 2012 indicating that no  
19 adverse effects are expected with the statement contained in Hydro One's  
20 submission that indicates that customers may be affected. Please clarify whether the  
21 original CIA conclusions hold true, otherwise please specify what the changes are.

22  
23 **Response**

24  
25 The original Customer Impact Assessment conclusions are correct, insofar as they refer  
26 to *transmission customers only*. No change to the Customer Impact Assessment is  
27 proposed. It is Hydro One Distribution's submission that its *distribution customers* may  
28 be affected by this project, discussed in more detail below.

29  
30 As context, Hydro One Transmission and Hydro One Distribution are two different  
31 businesses, which are licensed, regulated and run separately, although both contained  
32 within Hydro One Networks Inc. Hydro One Distribution has intervened in the subject  
33 proceeding *as a distributor* to protect its distribution customers in its licensed service  
34 area where Suncor's proposed transmission facilities will be located. Each of Hydro One  
35 Transmission and Hydro One Distribution has its own requirements respecting this  
36 Application:



1  
2 • Hydro One Transmission's purpose, through the undertaking of a Customer Impact  
3 Assessment, is to highlight significant impacts, if any, of this project's connection to  
4 affected *transmission customers* (only) early in the project development process, as  
5 noted in the Customer Impact Assessment's disclaimer quoted on page 1 of this  
6 Exhibit, and also as discussed extensively on page 4 of Hydro One Distribution's  
7 September 2<sup>nd</sup> Submission.

8  
9 • Hydro One Distribution's interest in this Application focuses on impacts on its  
10 *distribution customers* in the area who will lie 'behind' the future transmission lines,  
11 the resulting operational and safety issues and the cost impacts of required mitigation  
12 work on its distribution wires, which provide service broadly categorized as either  
13 primary (600 V and above) or secondary (less than 600 V). These distribution issues  
14 appropriately, are *not* part of the Transmission Customer Impact Assessment, but are  
15 identified and reviewed separately by Hydro One Distribution.

16  
17 The following points are made to address other comments in the Preamble to this Exhibit  
18 and provide context for responses to the remaining Interrogatories.

19  
20 Hydro One Distribution's comments on page 4 of its September 2<sup>nd</sup> Submission were  
21 intended to substantiate its point that the Transmission Customer Impact Assessment and  
22 System Impact Assessment, while complete in their assessments of this project's impacts  
23 on transmission customers and the Grid respectively, are not sufficient, nor intended, to  
24 enable conclusions on impacts for distribution customers. For this reason, Hydro One  
25 Distribution conducts its own review of potential issues pertaining to distribution  
26 connections, then contacts the generator-transmitter to discuss the management of  
27 solutions to these issues and the responsibility for related incremental costs which may  
28 arise.

29  
30 Therefore, a Perpendicular Crossing Agreement which includes an Emergency Services  
31 Agreement, between Hydro One Distribution and Suncor addressing the identified  
32 Distribution issues is under negotiation. On page 4 of its August 5<sup>th</sup> Submission, Suncor  
33 stated its concurrence with Hydro One Distribution's belief that distribution ratepayers  
34 should not be burdened by these incremental distribution costs. Suncor also stated its  
35 belief that the Perpendicular Crossing Agreement would be concluded in a few weeks.  
36 Today, the one thing requiring settlement is the treatment of indemnity between the two  
37 parties in the Emergency Services Agreement. So both parties have negotiated in good  
38 faith and progress has been made. However, time is of the essence. If the Board were to  
39 require the filing in confidence of a signed Perpendicular Crossing Agreement prior to

1 the construction of the proposed facilities as a Condition of Approval attached to its  
2 Decision or, as done with the Varna Wind Inc. Leave to Construct Application (EB-2012-  
3 0442), defer its Decision until notified of a signed agreement, Hydro One Distribution  
4 believes that would be very helpful to the completion of this proceeding.

**Ontario Energy Board (Board Staff) INTERROGATORY # 2**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment**
- b. Hydro One Submission dated September 10, 2014**
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility**
- d. Staff IRR 7 (ii) on Crossings**
- e. Suncor Argument-in-chief dated August 25, 2014**

**Preamble:**

Please refer to Exhibit I-1-1 for Preamble.

- ii. When did the cost issue associated with the crossing transpire as an unresolved matter?

**Response**

The cost issue was uncovered during a preliminary assessment made after the Application was filed earlier this year. Hydro One Distribution reached out to Suncor to address the issue immediately thereafter.

**Ontario Energy Board (Board Staff) INTERROGATORY # 3**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment**
- b. Hydro One Submission dated September 10, 2014**
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility**
- d. Staff IRR 7 (ii) on Crossings**
- e. Suncor Argument-in-chief dated August 25, 2014**

**Preamble:**

Please refer to Exhibit I-1-1 for Preamble.

- iii. Which entity is responsible for the relocation of the overhead secondary services underground occurred? Was this discussed in the CIA or in another document filed in this application?

**Response**

Hydro One Distribution, the licensed distributor in the area and the owner and operator of the overhead secondary services, is responsible for their relocation underground. As noted in the response to Exhibit I-1-1, the relocation of the overhead secondary services was not discussed in the Customer Impact Assessment, as these are distribution facilities connecting distribution customers and the scope of the Customer Impact Assessment study is limited to impacts of the proposed transmission line on *transmission-connected customers*. The relocation issue therefore, is addressed in the Perpendicular Crossing Agreement under negotiation between Hydro One Distribution and Suncor, a draft of which, is attached to Exhibit I-1-8.

**Ontario Energy Board (Board Staff) INTERROGATORY # 4**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment**
- b. Hydro One Submission dated September 10, 2014**
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility**
- d. Staff IRR 7 (ii) on Crossings**
- e. Suncor Argument-in-chief dated August 25, 2014**

**Preamble:**

Please refer to Exhibit I-1-1 for Preamble.

- iv. Please address costs after construction related to the Evergreen Switching Station.

**Response**

The Evergreen Switching Station (“ESS”) is owned and maintained by Hydro One Transmission. Therefore, all operating and maintenance costs will be borne by Hydro One Transmission.

**Ontario Energy Board (Board Staff) INTERROGATORY # 5**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment**
- b. Hydro One Submission dated September 10, 2014**
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility**
- d. Staff IRR 7 (ii) on Crossings**
- e. Suncor Argument-in-chief dated August 25, 2014**

**Preamble:**

Please refer to Exhibit I-1-1 for Preamble.

- v. Are the forecast incremental costs solely associated with this relocation or are there other costs? If so, which ones?

**Response**

The approximate incremental costs raised by Hydro One Distribution in its submissions for this Application are solely associated with the work to relocate its distribution assets as a result of the proposed transmission line.

For added clarity, the table on page 5 of the September 2<sup>nd</sup> submission, provides five customer arrangements addressing incremental work arrangements required for each of existing and future customers with either primary or secondary service.

Item (1), a secondary line for an *existing* customer would be relocated underground because its lower voltage renders it considerably more sensitive to the effect of the much higher voltage of the transmission line when in proximity to it. Item (3), secondary service for a future customer would be located underground for the same reason. Item (2), an existing primary voltage wire may not need relocation if the new transmission line is installed with appropriate clearances, as stated in the table. Item (4), service via a primary wire to a *future* customer, however, would be taken underground, as the transmission line would not have been built with the clearance needed for a future distribution overhead wire, as noted in the table.

The Distribution costs which might be considered “other” are discussed in item (5), which addresses a request from an existing customer for a service upgrade. As noted, the cost of a service upgrade cannot be readily forecast, as it would be specific to the

1 customer's request and situation. The possible removal or relocation costs of  
2 telecommunications assets attached under joint use contracts to impacted Hydro One  
3 Distribution poles might also be considered "other costs" as they would also be directed  
4 to Suncor. Please see Exhibit I-1-9 for further details.

5

6 As stated in Hydro One Distribution's September 2<sup>nd</sup> Submission, the costs quoted in the  
7 table are prospective and illustrative, with the wording in the Perpendicular Crossing  
8 Agreement intended to address various situations.

**Ontario Energy Board (Board Staff) INTERROGATORY # 6**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment**
- b. Hydro One Submission dated September 10, 2014**
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility**
- d. Staff IRR 7 (ii) on Crossings**
- e. Suncor Argument-in-chief dated August 25, 2014**

**Preamble:**

Please refer to Exhibit I-1-1 for Preamble.

- vi. This application relates to transmission infrastructure. Do the cost considerations referred to in Hydro One's submissions relate to the impact on transmission rates? If not, please explain.

**Response**

No, the cost considerations in Hydro One Distribution's September 2<sup>nd</sup> and September 10<sup>th</sup> submissions do not refer to any impact on transmission rates. The costs discussed in these submissions address operational and emergency protocols and the mitigation work on Hydro One's Distribution system needed to accommodate Suncor's proposed transmission line (Please see Exhibit I-1-8 for a list of the matters addressed in the Perpendicular Crossing Agreement).

Under the Distribution System Code rules, the work to address these issues would impose punitive incremental costs on affected Distribution customers. For example, as shown in the table (item 4) and footnote 4 on page 5 of Hydro Distribution's September 2<sup>nd</sup> Submission, the incremental cost of providing a new customer with primary service through an underground installation *triples* the normal connection cost (from \$5,570 to over \$15,000).

Hydro One Distribution and Suncor agree that it is appropriate for Suncor to bear these incremental costs for an agreed period of time, as they are incurred in order to accommodate Suncor's new transmission facilities. The only outstanding issue at this time is the matter of indemnity between the two parties as currently drafted in the proposed Emergency Services Agreement.



**Ontario Energy Board (Board Staff) INTERROGATORY # 7**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment**
- b. Hydro One Submission dated September 10, 2014**
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility**
- d. Staff IRR 7 (ii) on Crossings**
- e. Suncor Argument-in-chief dated August 25, 2014**

**Preamble:**

Please refer to Exhibit I-1-1 for Preamble.

- vii. Based on the Varna Wind Inc. precedent, and the fact that the cited CIA disclaimer contains safeguards, please explain why Hydro One did not build into its original CIA the necessary safeguards for the negative prospective situations highlighted in its submissions.

**Response**

As stated in response to Exhibit I-1-1, the scope of the Customer Impact Agreement does not address customers of Hydro One Distribution; it addresses the customers of Hydro One Transmission.

Hydro One Distribution believes that this separation between assessments by the two businesses is appropriate, given that they are separately regulated and licensed to serve two different customer groups. Hydro One Distribution therefore, does not advocate increasing the scope of the Transmission Customer Impact Agreement to consider distribution customers. Hydro One Distribution notes, however, that *there is no equivalent requirement for an assessment of the impacts of a transmission line on nearby distribution customers*. Therefore, it believes that the Board should not rely on only the transmitter's Customer Impact Agreement and the System Impact Assessment to conclude that there are no impacts of proposed transmission facilities on all customers, distribution or transmission. The local distributor's assessment of such impacts on their customers should also be considered prior to a Decision being rendered.

**Ontario Energy Board (Board Staff) INTERROGATORY # 8**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment
- b. Hydro One Submission dated September 10, 2014
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility
- d. Staff IRR 7 (ii) on Crossings
- e. Suncor Argument-in-chief dated August 25, 2014

**Preamble:**

Please refer to Exhibit I-1-1 for Preamble.

viii. What would the agreement between Suncor and Hydro One address, the six crossings? Please provide evidence that the terms of a potential agreement are germane to this leave to construct application. If available please file the form of the draft agreement.

**Response**

The Perpendicular Crossing Agreement (which includes the Emergency Services Agreement) would address both operational matters and responsibility for incremental costs associated with Hydro One Distribution's work on perpendicular crossings. Some work on these crossings will be required when the transmission lines are built, while other work may need to be performed later, as circumstances arise, for a time period which is mutually agreeable. Specifically, the terms of the overall agreement address:

- response times for trouble calls,
- protocols for emergency service coordination,
- asset placement and clearance standards,
- access to infrastructure and to customers,
- protocols respecting property rights,
- general coordination of operations,
- information provision and exchange between the parties and
- the sharing of incremental costs associated with the above.

Hydro One Distribution believes that a contractual definition of this emerging relationship will best enable prudent and effective management of *all* the above matters.

Filed: 2014-09-24

EB-2014-0022

Exhibit I

Tab 1

Schedule 8

Page 2 of 2

1 It is Hydro One Distribution's view that the quality of that relationship and the  
2 satisfactory resolution of these issues is germane to this leave to construct application,  
3 since these issues impact the price, as well as the reliability and quality of electricity  
4 service to Hydro One's Distribution customers, as stated on page 3 of Hydro One  
5 Distribution's September 2<sup>nd</sup> Submission.

6

7 Please find attached to this response, the draft Perpendicular Crossing Agreement and the  
8 Emergency Services Agreement currently under negotiation with Suncor. As these terms  
9 are still under negotiation, they may be subject to change.

## PERPENDICULAR CROSSING OPERATIONAL AGREEMENT

THIS AGREEMENT made in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date")

### BETWEEN:

#### **SUNCOR ENERGY PRODUCTS INC.**

a company incorporated under the laws of the Province of Ontario  
(hereinafter referred to as the "**Proponent**")

### OF THE FIRST PART

- AND -

#### **HYDRO ONE NETWORKS INC.**

a company incorporated under the laws of the Province of Ontario  
(hereinafter referred to as "**HONI**")

### OF THE SECOND PART

(hereinafter also referred to individually as a "**Party**" and collectively as the "**Parties**")

**WHEREAS** the Proponent and HONI have, or will have, assets comprised of insulators, poles and incidental equipment used for the transmission and distribution respectively of electricity in, through, under, over, across, along and upon municipally-owned lands within the area described as bounded by Cedar Point Line, Proof Line and Ridge Rd to the south; Rawlings Rd, Army Camp Rd and Northville Rd to the east; Ravenwood Line, Thomson Line and Proof Line to the north; Rawlings Rd, Fuller Rd and Dolmage Rd to the East, in the Municipality of Lambton Shores and more particularly illustrated in Schedule "A" hereto (the "**Lands**");

**AND WHEREAS** the Parties wish to outline herein their respective rights and obligations with regard to operational and financial matters regarding their respective assets on the Lands with due consideration to the safety of their respective employees, agents, servants and contractors, the preservation of each other's property and assets and the interests of their respective customers.

**NOW THEREFORE** in consideration of the mutual covenants, terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Parties hereto agree as follows:

### **1.0 DEFINITIONS**

In this Agreement, including the recitals and the Schedules hereto, in addition to terms defined elsewhere in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words shall have the following meanings:

- (a) "**Act**" means the *Excise Tax Act* (Canada), as amended.
- (b) "**Agreement**" means this Perpendicular Crossing Operational Agreement, including the Schedules attached hereto and made a part hereof by reference hereto, and any amendments to the Schedules or to the body of this Agreement.
- (c) "**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday, on which the principal commercial banks of Toronto, Ontario, Canada, are open for business during normal banking hours.



- (d) **"Cover-Up"** means an insulating device made of fiberglass or rubber that is installed on energized overhead electrical conductors and acts as an aid to assist with the visual identification of overhead conductors.
- (e) **"Defaulting Party"** has the meaning ascribed to it in clause 9.2 below.
- (f) **"Disclosing Party"** has the meaning ascribed to it in clause 14.11 below.
- (g) **"Dispute"** has the meaning ascribed to it in clause 8.1 below.
- (h) **"Emergency"** means a situation in which there is an imminent or existing interruption of electrical service, the condition of the electricity distribution and transmission poles and/or attachments thereon pose an imminent danger or threat to the safety, property, security or welfare of an individual or the public or the environment, and/or a situation declared as such by a public safety Government Authority.
- (i) **"Emergency Call"** means a call where the urgent assistance of a Party hereto has been requested by any Person in connection with the said Party's assets on the Lands.
- (j) **"FIT Contract"** means the power supply contract dated July 6, 2011, between the Proponent and the Ontario Power Authority (F-002175-WIN-130-601) (Version 1.5).
- (k) **"Good Utility Practice"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in North America during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to represent acceptable practices, methods or acts as generally accepted in North America
- (l) **"Governmental Authority"** means any government, parliament, legislature or any regulatory authority, agency, commission or a board of any government, parliament or legislature, or any political subdivision thereof, or any court or, without limitation to the foregoing, any other law, regulation or rule making entity or any Person acting under the authority of any of the foregoing or any other authority charged with the administration or enforcement of laws.
- (m) **"Harmonized Sales Tax" or "HST"** means the Harmonized Sales Tax chargeable in accordance with Part IX of the Act and for greater certainty includes the additional tax payable under subsection 165.(2) of the Act in respect of a supply made in a participating province.
- (o) **"Hold-Off"** means any action or activity carried out in order to block the auto reclosing and the manual re-energization of a line following an automatic trip.
- (p) **"HONI New Secondary Line"** has the meaning ascribed to this term in clause 4.3 below.
- (q) **"HONI Overhead Secondary Line"** has the meaning ascribed to this term in clause 4.1 below.
- (r) **"HONI Primary Line"** has the meaning ascribed to this term in clause 4.2 below.
- (s) **"Incident"** has the meaning ascribed to this term in clause 5.2 below.

- (t) **"Invoice"** has the meaning ascribed to this term in clause 4.1 below.
- (u) **"Laws and Regulations"** means:
- (i) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations, and statutes;
  - (ii) applicable orders, decisions, codes, manuals, interpretation bulletins, judgments, injunctions, decrees, awards, and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
  - (iii) applicable rulings and conditions of any license, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority; and / or
  - (iv) any requirements under or prescribed by applicable common law.
- (v) **"Non-Defaulting Party"** has the meaning ascribed to it in clause 9.2 below.
- (w) **"Notice"** has the meaning ascribed to this term in clause 4.1 below.
- (x) **"Party"** means either of HONI or the Proponent, and **"Parties"** means both of them.
- (y) **"Person"** means a natural person, firm, trust, partnership, association, unincorporated organization, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind
- (z) **"Proponent Overhead Transmission Poles"** has the meaning ascribed to this term in clause 4.1 below.
- (aa) **"Receiving Party"** has the meaning ascribed to this term in clause 14.11 below.
- (bb) **"Selling Party"** has the meaning ascribed to this term in clause 4.9 below.

## **2.0 TERM AND TERMINATION**

- 2.1 Except as otherwise specified, the term of this Agreement shall commence on the Effective Date and end on the earliest of the following (the **"Term"**):
- (a) the date of a Party's removal of all of its assets from the Lands;
  - (b) the effective date of termination specified in a notice of termination provided by a Non-Defaulting Party to a Defaulting Party pursuant to clause 9.2 below;
  - (c) the termination date of the FIT Contract; and
  - (d) subject to Section 2.2 below, the effective date of termination specified in a notice of termination provided by one Party to the other Party, which effective termination date shall not be earlier than (six) 6 months after the date of the said notice.
- 2.2 Neither Party may terminate this Agreement pursuant to Section 2.1(d) at any time prior to the termination date of the FIT Contract.



### 3.0 REPRESENTATIONS AND WARRANTIES

3.1 The Proponent represents and warrants for the Term of this Agreement (and, in so doing, acknowledges that HONI is relying on such representations and warranties in entering into this Agreement) that:

- (a) Corporate Status. The Proponent is a corporation duly constituted, validly existing and in good corporate standing under the laws of its incorporating jurisdiction;
- (b) Authority. The Proponent has the necessary corporate power, authority and capacity and good and sufficient right to enter into this Agreement on the terms and conditions herein set forth, and has, and, subject to the terms and conditions herein, covenants to maintain during the Term of this Agreement, the financial and other ability and authority to fulfill its obligations hereunder;
- (c) Valid, Binding and Enforceable. This Agreement constitutes a valid and binding obligation of the Proponent enforceable against it in accordance with its terms and conditions and the Proponent is not a party to, bound or affected by or otherwise subject to any indenture, mortgage, lease, charter or by-law provision, agreement or other instrument, or any statute, rule, regulation, judgment or other order which would be violated, contravened or breached by, or under which default would occur as a result of the execution of this Agreement or the compliance with and performance of any of the terms, conditions and covenants contemplated herein;
- (d) HST Registrant. The Proponent is duly registered under the Act and its HST registration number is [REDACTED] and such registration is in good standing and has not been revoked; and
- (e) Canadian Residency. The Proponent is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada), as amended.

3.2 HONI represents and warrants for the Term of this Agreement (and, in so doing, acknowledges that the Proponent is relying on such representations and warranties in entering into this Agreement) that:

- (a) Corporate Status. HONI is a corporation duly-constituted, validly existing and in good corporate standing under the laws of its incorporating jurisdiction;
- (b) Authority. HONI has the necessary corporate power, authority and capacity and good and sufficient right to enter into this Agreement on the terms and conditions herein set forth, and has, and, subject to the terms and conditions herein, covenants to maintain during the Term of this Agreement, the financial and other ability and authority to fulfill its obligations hereunder;
- (c) Valid, Binding and Enforceable. This Agreement constitutes a valid and binding obligation of HONI enforceable against it in accordance with its terms and conditions and HONI is not a party to, bound or affected by or otherwise subject to any indenture, mortgage, lease, charter or by-law provision, agreement or other instrument, or any statute, rule, regulation, judgment or other order which would be violated, contravened or breached by, or under which default would occur as a result of the execution of this Agreement or the compliance with and performance of any of the terms, conditions and covenants contemplated herein;

- (d) HST Registrant. HONI is duly registered under the Act and its HST registration number is [REDACTED] and such registration is in good standing and has not been revoked; and
- (e) Canadian Residency. HONI is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada), as amended.

#### **4.0 OPERATIONAL MATTERS**

4.1 **Existing Overhead HONI Secondary Lines** - Where HONI has an existing overhead secondary (up to 600V) electricity distribution line (hereinafter a "**HONI Overhead Secondary Line**") on, upon or over the Lands and the Proponent wishes to install an overhead electricity transmission line and associated poles (hereinafter collectively referred to as the "**Proponent Overhead Transmission Poles**") on, upon or over the Lands such that it will cross the HONI Overhead Secondary Line, the Proponent will notify HONI thereof in writing prior to installing the said line (the "**Notice**"). As soon as reasonably practical after HONI's receipt of the Notice HONI will issue an invoice to the Proponent for the estimated costs associated with HONI's relocation of the HONI Overhead Secondary Line to be under the Lands (the "**Invoice**"). HONI shall relocate the HONI Overhead Secondary Line under the Lands at its sole risk as soon as reasonably practical after receipt of full payment by the Proponent of HONI's Invoice. The Proponent shall not energize its new line until after the later of: (i) subject to Section 4.6, HONI's receipt of full payment of the Invoice by the Proponent; (ii) the complete installation of the HONI Overhead Secondary Line is underground; and (iii) delivery of the executed Emergency Services Agreement referred to in clause 7.1 below.

4.2 **New HONI Primary Lines** - Where the Proponent has existing Proponent Overhead Transmission Poles on, upon or over Lands and HONI wishes to either install a new primary electricity distribution line (i.e. 600V and over) to feed individual electricity distribution customers or upgrade an existing primary electricity distribution line to feed individual electricity distribution customers (either line hereinafter referred to as a "**HONI Primary Line**") on, upon or over the Lands such that it will cross the Proponent Overhead Transmission Poles, HONI shall notify the Proponent thereof in writing and the Proponent shall, in order to accommodate the HONI Primary Line and at its sole risk and expense, elect by notice in writing either to:

- (a) replace the poles that are part of the Proponent Overhead Transmission Poles with a pole(s) sufficient in height to accommodate the HONI Primary Line;
- (b) interspace a new pole in between existing poles that are part of the Proponent Overhead Transmission Poles to accommodate the HONI Primary Line; or
- (c) request HONI to install the HONI Primary Line under the Lands at the point of crossing.

If Proponent fails to make such election within five (5) Business Days of delivery of the notice given by HONI, then HONI may undertake the work described in subparagraph 4.2 (c).

4.3 **New HONI Secondary Lines** - Where the Proponent has existing Proponent Overhead Transmission Poles on, upon or over Lands and HONI wishes to install a new secondary (up to 600V) electricity distribution line to feed individual electricity distribution customers (hereinafter referred to as a "**HONI New Secondary Line**") on, upon or over the Lands such that it will cross the Proponent Overhead Transmission Poles, HONI shall notify the



Proponent thereof in writing and HONI shall install the HONI New Secondary Line under the Lands.

- 4.4 If the Proponent performs the activities described in clause 4.2(a) or clause 4.2(b), then the Proponent shall also:

(a) at its sole risk and expense transfer the Proponent's attachments from the existing Proponent Overhead Transmission Poles to the new poles; and

(b) ensure that any new pole is installed in accordance with the "Line Clearances" provisions of HONI's then current Overhead Distribution Standards, as may be amended by HONI from time to time in HONI's sole discretion.

- 4.5 Subject to clause 4.8 below, where HONI installs a HONI New Secondary Line pursuant to clause 4.3 above and/or HONI installs the HONI Primary Line under the Lands pursuant to clause 4.2 above, the Proponent shall:

(a) pay HONI's incremental costs to install the HONI New Secondary Line under the Lands and/or the HONI Primary Line respectively under the Lands in lieu of aboveground; HONI shall issue an invoice to the Proponent for the said costs prior to installing the HONI New Secondary Line and/or the HONI Primary Line respectively;

(b) pay incremental costs that would be payable by any of HONI's electricity distribution customers as a result of HONI installing the HONI New Secondary Line under the Lands and/or the HONI Primary Line under the Lands. HONI shall issue an invoice to the Proponent for the incremental cost for the work prior to proceeding. For the avoidance of doubt, payments made by the Proponent to HONI pursuant to this Section 4.5(b) shall not be duplicative of any payments made by the Proponent to HONI pursuant to Section 4.5(a) above.

- 4.6 The Proponent shall pay all invoices issued by HONI pursuant to this Agreement and payable by the Proponent within thirty (30) Business Days after the date of the relevant invoice. Unpaid invoices shall bear interest from the payment due date until the date of payment at a rate of [REDACTED] per month compounded monthly [REDACTED] provided that the Proponent may withhold from payment the portion of any invoice reasonably disputed, and interest will accrue only on the amount as finally determined by agreement or otherwise until the date of payment.

- 4.7 The Proponent's obligations to pay the costs described in this Section 4.0 shall terminate on December 31, 2025, except for the Proponent's obligation to pay all costs related to any work performed by HONI as described in this Section 4.0 and for which HONI has issued an invoice prior to this date, which obligation shall forever survive the termination or expiry of this Agreement.

- 4.8 The Parties acknowledge and agree that in no event shall the incremental costs referenced in clause 4.5 above and payable by the Proponent exceed: (a) [REDACTED] per HONI New Secondary Line crossing and (b) [REDACTED] per HONI Primary Line crossing, for the period commencing on the Effective Date and terminating on December 31, 2025.

- 4.9 Neither Party (the "**Selling Party**") shall sell or otherwise transfer or dispose of its assets on the Lands during the Term of this Agreement unless as a condition to completing such sale or other disposition, the Selling Party causes the purchaser/transferee to enter into an assignment and assumption agreement with the Selling Party in favour of the other Party, agreeing to assume all of the Selling Party's obligations in this Agreement it being

understood that such assignment shall not relieve the Selling Party from its obligations hereunder.

- 4.10 Each Party shall, and shall ensure that its employees, agents, representatives, contractors and subcontractors shall, in the performance of its obligations and the exercise of its rights under this Agreement, comply with all Laws and Regulations at all times during the Term of this Agreement.

## **5.0 TROUBLE CALLS AND RESPONSE TIMES**

- 5.1 Emergency Calls received by a Party hereto must be responded to by the said Party within 120 minutes. This service quality requirement shall be met by each Party at least eighty (80) percent of the time on a yearly basis.

- 5.2 Where a Party's assets in, through, under, over, across, along and upon the Lands are damaged, compromised or dealt with in such manner so as to interfere in any way with the other Party's assets in, through, under, over, across, along and upon the Lands or such other Party's use, energization and operation thereof (collectively, an "**Incident**"), the Party whose assets have been compromised shall offer electrical protection in accordance with the Utility Work Protection Code and mechanical protection to such other Party, its employees and contractors and such other Party's assets at no cost to such other Party and the protecting Party shall remedy the situation and enable the other Party to re-energize, use, operate, and otherwise deal with its assets as it deems necessary or desirable within four (4) hours after the relevant Incident. If both Parties' assets in, through, under, over, across, along and upon the Lands are damaged or compromised as a result of an act of God, the Parties shall immediately discuss and plan restoration efforts.

- 5.3 If a Party needs to perform planned maintenance on its assets located in, through, under, over, across, along and upon the Lands and in order to safely perform such maintenance requires that the other Party de-energize its assets in, through, under, over, across, along and upon the Lands for purposes of such work, the requesting Party shall provide the other Party with one (1) month's notice thereof and such other Party shall comply with such requirement by no later than the last day of the notice period. If either Party needs to perform Emergency maintenance work on its assets located in, through, under, over, across, along and upon the Lands in response to a trouble call and requires that the other Party de-energize its assets on the Lands for purposes of such work, the requesting Party shall immediately notify the other Party and such other Party shall, comply with such requirement immediately after receiving notice thereof. The requesting Party shall perform any maintenance or Emergency maintenance work pursuant to this Section 5.3 in the shortest time reasonably possible and shall reimburse the other Party for any costs incurred as a result of any requested de-energization.

- 5.4 If either Party needs to perform planned or Emergency maintenance work on its assets located in, through, under, over, across, along and upon the Lands while the assets are energized, such Party shall notify the other Party thereof and the other Party shall, at its sole risk and expense,:

- (i) immediately after receipt of the said notice, in the case of Emergency maintenance work, and
- (ii) within five (5) Business Days after receipt of said notice,

issue Hold-Offs on its circuits located in, through, under, over, across, along and upon the Lands and install Cover-Ups on its circuits, both as the Parties mutually agree.



## **6.0 PROPERTY RIGHTS**

Where applicable and for purposes of the exercise of each Party's rights and obligations under this Agreement, each Party is responsible for obtaining occupancy rights for its own plant from the owners of lands that are not municipally-owned; provided, however, that (i) such occupancy rights will be obtained so as not to interfere with any of the other Party's pre-existing occupancy rights, (ii) the exercise of such occupancy rights will not obstruct the operations of the other Party's plant and (iii) neither Party will obstruct, directly or indirectly, the obtaining of any such occupancy rights by the other Party. For the avoidance of doubt, where a Party holds existing occupancy rights from the owners of lands that are not municipally-owned, the existence and enforcement of such rights shall not be considered an obstruction of the other Party's attempt to obtain occupancy rights for the purposes of this Section 6.0.

## **7.0 EMERGENCY SERVICES AGREEMENT**

- 7.1 Within thirty (30) Business Days after the Effective Date, the Parties shall execute the Emergency Services Agreement in the form attached hereto as Schedule "B".

## **8.0 DISPUTE RESOLUTION PROCEDURE**

- 8.1 The Proponent and HONI shall seek to resolve disputes problems or concerns related to this Agreement (a "**Dispute**") at the operational level. Except in circumstances where an Emergency exists as may be determined by the Party experiencing the Emergency using Good Utility Practice, in which case this Section 8.0 does not apply, if such a Dispute is not resolved within thirty (30) days after the Dispute arises, either Party may, by written notice to the other, refer the Dispute to a committee to be formed and to be comprised of two (2) representatives, one appointed by each Party. If the two representatives cannot resolve the Dispute within ten (10) days after reference to them, either Party may seek such further recourse as it deems appropriate including bringing an application to the Ontario Energy Board for dispute resolution. Nothing in this Section 8.0 serves as a waiver of any other rights or remedies that either Party may have pursuant to this Agreement, at law or equity.
- 8.2 The Parties intend all statements made and documents provided or exchanged in connection with the dispute resolution process described in clause 8.1 to be confidential and neither Party shall disclose the existence or content of the Dispute, or the results of any dispute resolution process, to third parties other than outside counsel, except with the prior written consent of the other Party or pursuant to legal process.

## **9.0 EVENTS OF DEFAULT**

- 9.1 The occurrence or happening of any one or more of the following events shall constitute an Event of Default:
- (a) a Party becomes insolvent or bankrupt or unable to pay its debts as they fall due, or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law;
  - (b) a Party violates any applicable law or other legal requirement which results in a material impact on the rights, benefits, obligations or duties under this Agreement;
  - (c) a Party breaches a material term, condition, or covenant of this Agreement; and

- (d) the private or court appointment of a receiver or receiver and manager or officer with similar power over any part of a Party's property.

9.2 As soon as a Party (the "**Non-Defaulting Party**") becomes aware of the happening of an Event of Default by the other Party (the "**Defaulting Party**"), the Non-Defaulting Party shall provide the Defaulting Party with written notice of the Event of Default and the Non-Defaulting Party shall allow the Defaulting Party to cure or rectify such Event of Default within thirty (30) Business Days after receipt of the notice and, subject to the provisions herein, if the Event of Default is not cured within the thirty (30) Business Day period to the Non-Defaulting Party's reasonable satisfaction, the Non-Defaulting Party may terminate this Agreement upon written notice to the Defaulting Party and/or cure the Event of Default and the Defaulting Party shall reimburse the Non-Defaulting Party for the costs thereof immediately upon receipt of an invoice therefor.

9.3 All rights and remedies of the Parties provided herein are not intended to be exclusive but rather are cumulative and are in addition to any other right or remedy otherwise available to the Parties respectively at law or in equity, and any one or more of the Parties' rights and remedies may from time to time be exercised independently or in combination and without prejudice to any other right or remedy the Parties may have or may have exercised. The Parties further agree that where any of the remedies provided for and elected by the Non-Defaulting Party are found to be unenforceable, the Non-Defaulting Party shall not be precluded from exercising any other right or remedy available to it at law or in equity.

#### **10.0 Technical Matters**

10.1 The Proponent shall, within 90 days after the Commercial Operation Date (as defined in the FIT Standard Definitions, Version 1.5 dated June 3, 2011 referenced in the FIT Contract and which Commercial Operation Date shall be confirmed in writing by the Proponent to HONI as soon as it is known to the Proponent) of the Proponent Overhead Transmission Poles which for the purposes of this subparagraph 10.1 includes plant located in the vicinity of the Lands, supply HONI with "as built" GIS maps of: (i) all of the Proponent Overhead Transmission Poles that are located, or will be located, in, through, under, over, across, along and upon the Lands and (ii) the Proponent's underground collector system.

10.2 The Proponent shall, within 90 days after the Commercial Operation Date of the Proponent Overhead Transmission Poles and in respect of all of its assets in, through, under, over, across, along and upon the Lands, become a member of Ontario One Call (ON1CALL) and maintain such membership during the Term of this Agreement.

#### **11.0 Notice**

11.1 The authorized representatives of the Parties hereto for purposes of this Agreement are the following:

To: Hydro One Networks Inc.  
185 Clegg Road,  
Markham Ontario. L6G 1B7  
Attention: Manager of Program Integration – Distribution Asset Management  
Fax: (905) 946-6215



To: Suncor Energy Products Inc.  
150 – 6<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3E3  
Attention: Manager, Contracts, Renewable Energy  
Telephone/Mobile: (403) 296-4070  
Fax: (403) 724-3699

Any notices, correspondence or other documents required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been properly given on the date of actual delivery if delivered by hand or by courier, five (5) Business Days after dispatch by registered mail, and on the date faxed (unless it is faxed after the addressee's normal business hours, in which case it shall be deemed received on the addressee's next Business Day), addressed to the Party to whom it was sent at the address, or fax number, of such Party set forth above or at such other address or fax as the Party shall subsequently designate to the other Party by notice given in accordance with this clause.

## **12.0 FORCE MAJEURE**

- 12.1 Except for the payment of any monies required hereunder, neither Party shall be deemed to be in default of this Agreement where the failure to perform or the delay in performing any obligation is due to a cause beyond its reasonable control, including, but not limited to, an act of God, act of any federal, provincial or municipal government, or order of court or administrative or regulatory authority, civil commotion, strikes, lockouts and other labour disputes, fires, floods, sabotage, earthquakes, storms, ice storms and epidemics.
- 12.2 Once a Party becomes subject to such an event of force majeure, it shall promptly notify the other Party of its inability to perform, or of any delay in performing, due to an event of force majeure and shall provide an estimate, as soon as practicable, as to when the obligation will be performed. The Party subject to the force majeure event shall also continue to furnish timely reports to the other Party with respect to the force majeure event during the continuation of the said event and the said Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party. The Party subject to the force majeure event shall use its best efforts to continue to perform its obligations under this Agreement and to correct or cure the event or condition excusing performance and when the said Party is able to resume performance of its obligations thereunder, it shall give the other Party written notice to that effect and shall promptly resume performance thereunder. The time for performing the obligation shall be extended for a period equal to the time during which the Party was subject to the event of force majeure. The Parties shall explore all reasonable avenues available to avoid or resolve events of force majeure in the shortest time possible. After impediments due to force majeure have been dissipated, the Parties shall mutually agree on necessary time extensions and other adjustments to resume the Services and correct the effects the event of force majeure might have had.
- 12.3 Notwithstanding the two preceding paragraphs of this Section 12.0, the settlement of any strike, lockout, restrictive work practice or other labour disturbance constituting a force majeure event shall be within the sole discretion of the Party involved in such strike, lockout, restrictive work practice or other labour disturbance and nothing in the said two preceding paragraphs shall require the said Party to mitigate or alleviate the effects of such strike, lockout, restrictive work practice or other labour disturbance.

### **13.0 ASSIGNMENT**

- 13.1 Each Party may assign this Agreement and any of its rights and obligations hereunder without having to obtain the other Party's prior consent; provided, however, that in the case of such assignment, the assignor covenants and agrees to cause the assignee to execute an assignment, consent and assumption agreement with the assignor in favour of the other Party to assume all of the assignor's obligations in this Agreement it being understood that such assignment shall not relieve such assignor from its obligations hereunder. Subject to the foregoing, this Agreement shall enure to the benefit of the Parties hereto and their respective successors and permitted assigns.

### **14.0 GENERAL**

- 14.1 Further Assurances – Each Party shall, from time to time, deliver all such further documents and instruments and do all acts and things as the other Party may, at any time, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 14.2 Amendments - This Agreement may be amended only by mutual written agreement of the Parties.
- 14.3 Entire Agreement This Agreement, together with Schedules "A" and "B" attached hereto, represents the entire agreement between the Parties hereto respecting the subject matter hereto and supersedes all prior agreements, understandings, discussions, negotiations, representations and correspondence made by or between them respecting the subject matter hereto.
- 14.4 Governing Law - This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and the Parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in the event of a Dispute hereunder.
- 14.5 Schedules - The following schedules attached hereto are to be read with and form part of this Agreement:
- Schedule "A" - Description of Lands
- Schedule "B" - Form of Emergency Services Agreement
- 14.6 Severability - If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.
- 14.7 Time of the Essence – Time shall be of the essence of this Agreement and every part thereof.
- 14.8 Relationship of Parties – Nothing in this Agreement creates the relationship of principal and agent, employer and employee, partnership or joint venture between the Parties. The Parties agree that they are and will at all times remain independent and are not and shall not present themselves to be the agent, employee, partner or joint venturer of the other. No representations will be made or acts taken by either Party which could establish any apparent relationship of agency, employment, joint



venture or partnership and neither Party shall be bound in any manner whatsoever by any agreements, warranties or representations made by the other Party to any other Person nor with respect to any other action of the other Party.

- 14.9 Order of Precedence – In the event of any conflict, ambiguity or inconsistency between the provisions of the body of this Agreement and any Schedules hereto, the provisions of the Agreement shall govern and take precedence to the extent of such conflict, ambiguity or inconsistency, as the case may be. In the event of any conflict, ambiguity or inconsistency between the Schedules hereto, the Schedules shall be interpreted in the sequential order in which they are attached to this Agreement.
- 14.10 No Third-Party Beneficiaries – Except where otherwise specified, this Agreement is entered solely by and between, and may be enforced only by, the Proponent and HONI. Except where otherwise specified, this Agreement shall not be deemed to create any rights in third parties, including, without limitation, parent, subsidiaries and affiliates, supplier and customers of either Party, or to create any obligations of a Party to any such third parties.
- 14.11 Confidentiality. Except as provided herein, neither Party (the "**Receiving Party**") will disclose to any third party the terms, conditions and the fact of the existence of this Agreement and of the Emergency Services Agreement referenced in clause 7.1 above executed by the Parties or any information marked "confidential" and received under this Agreement by the other Party (the "**Disclosing Party**") concerning the Disclosing Party or any of its affiliates. Notwithstanding the foregoing, such information may be disclosed (a) to the Receiving Party's prospective lenders and their advisors, counsel and employees, and to the Receiving Party's advisors, counsel, directors, officers and employees, (b) to the extent the Disclosing Party consents in writing, (c) to the extent required to be disclosed by law or pursuant to a deposition, interrogatory, request for documents (including, without limitation, pursuant to a request under the *Freedom of Information and Protection of Privacy Act* (Ontario), subpoena, civil investigative demand or similar legal process, or pursuant to a legal requirement or order of a judicial, governmental, regulatory or quasi-regulatory body, or (d) to the extent such information (i) is or becomes publicly available other than as a result of a disclosure in violation hereof, (ii) is or becomes available on a non-confidential basis from a source other than the Disclosing Party, provided that, to the Receiving Party's knowledge, such source was not prohibited from disclosing such information by a legal, contractual or fiduciary obligation to the Disclosing Party or another person, (iii) is already known to or in the possession of the Receiving Party prior to the date hereof (and the Receiving Party can establish such prior knowledge or possession) and was obtained, to the Receiving Party's knowledge, without violation of a legal, contractual or fiduciary obligation to the Disclosing Party or another person or (iv) is independently known to, discovered or developed by the Receiving Party without use or reference to any such information.
- 14.12 Waiver – The failure of either Party to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Agreement shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof nor a waiver by the Party at any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which the Party has failed to exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by the Party which expressly waives a right, power or option under this Agreement.

14.13 Counterparts – This Agreement may be executed in counterparts and the counterparts together shall constitute an original.

14.14 Publicity – Neither Party shall disclose the existence of or the terms or conditions of, this Agreement or any part thereof in any press release, advertising or other publicity without the prior written consent of the other Party.

**IN WITNESS THEREOF** the Parties hereto have caused this Agreement to be executed by their respective representatives duly authorized in that behalf.

**HYDRO ONE NETWORKS INC.**

\_\_\_\_\_  
Name: Paul Brown

Title: Director, Distribution Asset Management

I have authority to bind the corporation.

**SUNCOR ENERGY PRODUCTS INC.**

\_\_\_\_\_  
Name:

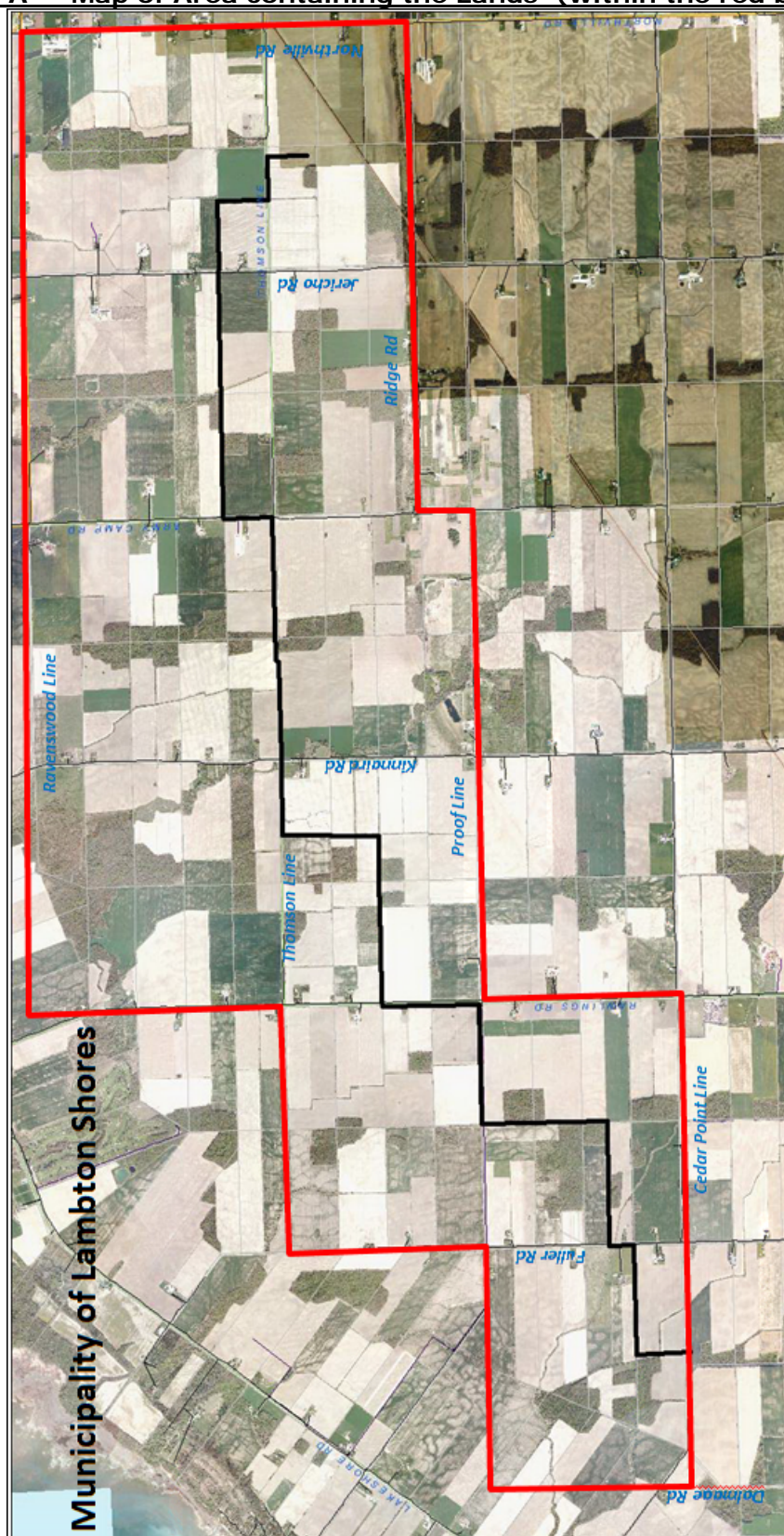
Title:

I have authority to bind the corporation.



*Draft*

**Schedule "A" - Map of Area containing the Lands (within the red boundaries)**



**Schedule "B"**

**Form of Emergency Services Agreement**

**Draft**

## EMERGENCY SERVICES AGREEMENT

THIS AGREEMENT made in duplicate this • day of •, 2014 (the "Effective Date").

B E T W E E N :

**HYDRO ONE NETWORKS INC.**, a corporation duly incorporated pursuant to the laws of the Province of Ontario

(the "Services Provider")

- and -

**SUNCOR ENERGY PRODUCTS INC.**, a corporation duly incorporated pursuant to the laws of the Province of Ontario

(the "Services Recipient")

**WHEREAS** by virtue of the Services Provider's position and role in the electricity market in Ontario, the public may contact the Services Provider to respond to trouble calls relating to the Services Recipient's assets including underground wires, hydroelectric poles and the Services Recipient's attachments on those poles (collectively the "Assets").

**WHEREAS** the Services Recipient wishes to retain, on a non-exclusive basis, the Services Provider to respond to the public's trouble calls relating to the Services Recipient's Assets.

**AND WHEREAS**, in accordance with the terms and conditions of this Agreement, the Services Provider has agreed to take such actions in relation to the public's trouble calls to make emergency situations safe to the general public so that the Services Recipient has sufficient time to repair and or otherwise deal with its Assets.

**WITNESSES THAT** in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### 1. Scope of Services

During the Term hereof (as defined in Section 3 below), on a non-exclusive basis, and subject to the terms and conditions of this Agreement, if contacted by a member of the public or the Services Recipient, the Services Provider shall provide to the Services Recipient trouble call services for the Assets located in Lambton County, Ontario bounded by traversing from extending MacFarlane Rd north to the west, Lakeshore Rd to the north west, Ipperwash Rd and Ravenswood Line to the North, Northville Rd to the east, Townsend Line to the south, Warwick Village Rd to the east, Hickory Creek Line to the south, extending Rawlings Rd south to the west, Townsend Line to the south, Bush Rd to the west and Fisher Line to the south, which services are more particularly described in Schedule "A" attached hereto (the "Emergency Services"). The Services Recipient shall comply with its obligations specified in Schedule "A" attached hereto.

### 2. Compensation

- (a) In consideration of the Emergency Services to be provided by the Services Provider hereunder, the Services Recipient shall remit to the Services Provider all amounts required to be paid within thirty (30) days upon the Services Provider's delivery of an



invoice setting out the nature of services provided. The fees shall be calculated as follows:

- i. For 2014, the minimum charge for providing an Emergency Service is [REDACTED] per trouble call ("**Trouble Call Service Fee**"). The Trouble Call Service Fee covers the cost of the trouble truck and two hours of time for two individuals for travel and work (the "**Minimum Call**"). For certainty, there shall be no charge whatsoever for phone calls to the Services Recipient's Emergency Line that do not result in the dispatching of a trouble truck or any individuals.
  - ii. For 2014, each additional hour above the Minimum Call for a two-person crew with trouble truck shall be [REDACTED] per hour (the "**Hourly Rate**"). Where the additional time includes part of an hour, the time will be rounded up to the nearest 15 minute interval and the corresponding labour cost will be pro-rated.
  - iii. Where additional labour is necessary to provide Emergency Services, such additional labour will be provided at the Services Providers' commercial rates.
  - iv. All materials used in the course of providing Emergency Services to the Services Recipient will be charged to the Services Recipient at the Services Provider's cost plus [REDACTED] of such cost.
  - v. The fees noted above shall be revised by the Services Provider within the first quarter of each calendar year. The Services Provider will advise the Services Recipient of any rate changes relating to the minimum charge and hourly charge.
- (b) In addition to the payments to be made pursuant to Subsection 2 (a) above, the Services Recipient shall reimburse the Services Provider for all expenses incurred by the Services Provider in connection with the Emergency Services provided to the Services Recipient hereunder including, without limitation reasonable travel and other costs and expenses in connection therewith. Notwithstanding the foregoing, the Services Provider shall not be reimbursed for any parking fees hereunder. The Services Provider shall submit to the Services Recipient invoices and statements setting out in reasonable detail the nature and amount of the expenses or costs incurred by the Services Provider for which the Services Provider claims reimbursement, and the Services Recipient shall within thirty (30) days of the receipt of invoices and statements reimburse the Services Provider for all invoiced expenses and costs.
- (c) All fees paid or payable to the Services Provider are subject to applicable taxes as may be mandated by a competent government authority from time to time. The Services Provider agrees to provide the Services Recipient with any documentary evidence as may be required by it in order to claim input tax credits/reimbursements in respect of any HST paid to the Services Provider and all invoices, statements of account or any similar documents rendered by the Services Provider shall contain such information as is required by, or prescribed under, the HST legislation. For the purposes of this Agreement, HST means the federal Harmonized Sales Tax chargeable in accordance with Part IX of the *Excise Tax Act* (Canada), as amended, in respect of supplies made in the province of Ontario.

### 3. Term

Except as otherwise specified, the term of this Agreement shall commence on the day set forth above and shall expire five (5) years from the Effective Date (the “**Initial Term**”) and shall thereafter be automatically renewed for successive periods of one (1) year (the Initial Term and renewal periods collectively referred to as the “**Term**”). Either party may terminate this Agreement effective any time after the expiry of the Initial Term by providing at least six (6) months prior written notice of termination to the other party.

### 4. Representations and Warranties

- (a) Services Provider represents and warrants that:
  - (i) Corporate Status. Services Provider is a corporation duly constituted, validly existing and in good corporate standing under the laws of the Province of Ontario;
  - (ii) Authority. Services Provider has the necessary corporate power, authority and capacity and good and sufficient right to enter into this Agreement on the terms and conditions herein set forth; and
  - (iii) Valid, Binding and Enforceable. This Agreement constitutes a valid and binding obligation of the Services Provider enforceable against it in accordance with its terms and conditions;
- (b) Services Recipient represents and warrants that:
  - (i) Corporate Status. Services Recipient is a corporation duly constituted, validly existing and in good corporate standing under the laws of the Province of Ontario;
  - (ii) Authority. Services Recipient has the necessary corporate power, authority and capacity and good and sufficient right to enter into this Agreement on the terms and conditions herein set forth;
  - (iii) Valid, Binding and Enforceable. This Agreement constitutes a valid and binding obligation and will not result in the violation of any of the terms and provisions of the constating documents of the Services Recipient and is enforceable against it in accordance with its terms and conditions;
  - (iv) the execution and delivery of, and the performance of the Services Recipient’s obligations under this Agreement have been duly authorized on behalf of the Services Recipient and no corporate action on the part of the Services Recipient are necessary in connection therewith; and
  - (v) it is the absolute beneficial and legal owner of the assets covered by this Agreement and every part thereof and presently has good, clear and marketable title thereto, free and clear of any liens, charges, encumbrances or rights of others and is exclusively entitled to and authorized to enter into this Agreement in respect thereof.



## 5. Independent Contractor

Nothing in this Agreement creates the relationship of principal and agent, employer and employee, partnership or joint venture between the parties. The parties agree that they are and will at all times remain independent and are not and shall not present themselves to be the agent, employee, partner or joint venture of the other. No representations will be made or acts taken by either party which could establish any apparent relationship of agency, employment, joint venture or partnership and neither party shall be bound in any manner whatsoever by any agreements, warranties or representations made by the other party to any other person nor with respect to any other action of the other party.

## 6. Insurance

Save and except where the parties specify otherwise in writing, the Services Recipient shall, at its own expense, obtain and maintain and keep in full force and effect during the Term hereof or any extension thereof:

- (a) commercial general liability insurance having a minimum inclusive coverage limit, including personal injury and property damage, of at least [REDACTED]. The Services Recipient must add the Services Provider as an additional insured in such insurance policy, but only with respect to any potential legal liability arising out of the operations, actions or conduct of such insured as per this Agreement. Such insurance should be extended to cover contractual liability, products/completed operations liability and must also contain a cross liability clause; and
- (b) automobile liability insurance on all vehicles used in connection with this Agreement and such insurance shall have a limit of at least [REDACTED] in respect of bodily injury (including passenger hazard) and property damage inclusive of any one accident; and
- (c) non-owned automobile liability insurance and such insurance shall have a limit of at least [REDACTED] in respect of bodily injury and property damage, inclusive in any one accident.

Upon execution of this Agreement, the Services Recipient shall provide to the Services Provider a copy of a certificate of insurance completed by a duly authorized representative of its insurer which will include the Services Recipient certifying that the minimum coverages required herein are in effect and that the coverages will not be cancelled, non renewed or materially changed by endorsement or through issuance of other policy(ies) of insurance which restricts or reduces coverage, without thirty (30) days advance written notice, which notice shall be given in accordance with Section 10.

## 7. Indemnity

Except with respect to any damages not caused by the Services Recipient and directly incurred by the Services Provider while the Services Provider is en route to the Assets of the Services Recipient requiring the Emergency Services, the Services Recipient shall be liable for and shall indemnify the Services Provider and the Services Provider's successors and assigns, shareholder, directors, officers, employees, contractors and agents (collectively, the "Indemnitees") from and against any and all any loss, damage or injury (including death) to persons or property and any and all actions, manner of actions, causes of actions, damages, suits, proceedings, claims, debts, obligations, liabilities expenses, demands, penalties, fines and costs arising therefrom and connected therewith, of any

nature or kind whatsoever (including, without limitation, any economic loss, loss of goodwill, loss of profit or for any special, indirect or consequential damages), which are attributable to, based upon or related to, any actions or omissions of the Services Provider including, without limitation, the Services Provider's performance and/or non-performance of its obligations under this Agreement, (and any amendments or additions thereto that are mutually agreed to in writing), whether arising from or based on breach of contract, tort, negligence, strict liability or otherwise and the Services Recipient does hereby for itself and its successors and assigns release and forever discharge the Indemnitees from and against any and all such aforementioned liability.

This Section 7 shall forever survive the termination or expiration of this Agreement.

## **8. Compliance With Law**

Each party shall at all times comply with all statutes, regulations, by-laws, standards and codes as may be applicable to it in respect of the performance of its obligations hereunder.

## **9. Waiver**

The failure or delay of either party to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Agreement shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof nor a waiver by the party at any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which the party has failed to exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by the party which expressly waives a right, power or option under this Agreement.

## **10. Notice**

With the exception of any notice required in connection with the Emergency Services as provided for in Schedule A, any other notice or other communication required or permitted to be given under or pursuant to the provisions hereof or in any way concerning this Agreement shall be sufficiently given if reduced in writing and delivered to the person to whom such communication is to be given, or mailed to such person by prepaid mail addressed to such person at the address set forth below:

If to the Services Recipient:

**Suncor Energy Products Inc.**  
150 – 6<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3E3  
Attention: Gavin Lowe  
Telephone/Mobile: (403) 296-4207  
Fax: (403) 724-3699

If to the Services Provider:

**HYDRO ONE NETWORKS INC.**  
77144 London Rd Highway #4 South, Clinton, ON, N0M 1L0  
Attention: Rob Vader, Distribution Supervisor for Provincial Lines  
Cell Phone: 519-525-0284



AND TO:

185 Clegg Road,  
Markham Ontario  
L6G 1B7

Attention: Manager – Program Integration – Distribution Asset Management  
Facsimile: (905) 946-6215

or at such other address as may be specified therefore by proper notice hereunder. Any communication mailed as aforesaid shall be deemed to have been given and received on the fifth (5th) business day following the date on which it was so mailed, where such communication is sent by facsimile transmission it shall be deemed to have been given and received on the next business day, and where such communication is personally delivered it shall be deemed to have been given and received when so delivered.

## **11. Interpretation**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Headings used herein are for the convenience of reference only and shall not be considered in construing or interpreting this Agreement. The words "herein", "hereunder", "hereof" and other similar words refer to this Agreement as a whole and not to any particular paragraph. Any provision herein prohibited by law shall to the extent prohibited be ineffective without invalidating any other provisions hereof. This Agreement, together with all schedules attached hereto and all documents referenced therein constitutes the entire agreement of the parties hereto and supersedes all prior agreements and understandings, oral or written, among the parties hereto with respect to the matters herein and shall not be modified or amended except by written agreement signed by the parties.

## **12. Assignment**

Neither this Agreement nor any rights and obligations shall be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, unless such assignment is to an affiliate of such party, in which case no consent is required; provided, however, that in the case of the Services Recipient wishing to assign this Agreement or any part thereof to an affiliate, no consent from the Services Provider is required so long as the Services Recipient provides the Services Provider with evidence that the assignee has or will purchase the Assets from the Services Recipient prior to or simultaneously with the effective date of the assignment. Subject to the foregoing, this Agreement shall ensure to the benefit of the parties hereto and their respective successors and permitted assigns.

## **13. Force Majeure**

- (a) Save and except for the payment of any monies required hereunder, neither party shall be deemed to be in default of this Agreement where the failure to perform or the delay in performing any obligation is due wholly or in part to a cause beyond its reasonable control, including but not limited to an act of God, an act of any federal, provincial or municipal government, or order of court or administrative or regulatory authority, civil commotion, strikes, lockouts and other labour disputes, fires, floods, sabotage, earthquakes, storms, epidemics, and an inability due to causes beyond the reasonable control of the party. The party subject to such an event of force majeure shall promptly notify the other party of its inability to perform or of any delay in performing due to an event of force majeure and shall provide an estimate, as soon as practicable, as to when the obligation will be performed. The time for performing the obligation shall be



extended for a period equal to the time during which the party was subject to the event of force majeure. Both parties shall explore all reasonable avenues available to avoid or resolve events of force majeure in the shortest time possible.

- (b) Notwithstanding subsection 13(a) above, the settlement of any strike, lockout, restrictive work practice or other labour disturbance constituting a force majeure event shall be within the sole discretion of the party involved in such strike, lockout, restrictive work practice or other labour disturbance and nothing in subsection 13(a) above shall require the said party to mitigate or alleviate the effects of such strike, lockout, restrictive work practice or other labour disturbance.

#### **14. Statement on Business Conduct**

The Services Provider agrees to comply with Hydro One's Code of Business Conduct, as it may be amended from time to time by Hydro One Inc. and/or its subsidiaries.

#### **15. Schedule**

Schedule "A" attached hereto is to be read with and forms part of this Agreement.

#### **16. Counterparts**

This Agreement may be executed in counterparts and the counterparts together shall constitute an original.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

#### **HYDRO ONE NETWORKS INC.**

\_\_\_\_\_  
Name: Paul Brown  
Title: Director, Distribution Asset Management  
I have authority to bind the corporation.

#### **SUNCOR ENERGY PRODUCTS INC.**

\_\_\_\_\_  
Name:  
Title:  
I have the authority to bind the corporation.

### Schedule "A"

The Services Provider shall provide to the Services Recipient the Emergency Services described below in respect of the Assets located in Lambton County, Ontario bounded by traversing from extending MacFarlane Rd north to the west, Lakeshore Rd to the north west, Ipperwash Rd and Ravenswood Line to the North, Northville Rd to the east, Townsend Line to the south, Warwick Village Rd to the east, Hickory Creek Line to the south, extending Rawlings Rd south to the west, Townsend Line to the south, Bush Rd to the west and Fisher Line to the south, (the "**Service Area**", which Service Area is illustrated by the red line in Exhibit 1 attached to this Schedule "A").

The Services Provider shall perform the following activities which collectively constitute the Emergency Services in accordance with, and subject to, the terms and conditions of this Agreement:

1. Upon discovering or being notified by a third party that the Assets of the Services Recipient require emergency trouble work, the Services Provider shall notify the Services Recipient by placing a telephone call to the Services Recipient's Emergency Line: (403) 807-9270. This Emergency Line shall be available for use 24 hours per day 7 days per week and the Services Recipient shall have someone available during such times to answer and respond to calls at this Emergency Line. The Services Recipient shall respond to any such call and arrive at the relevant site within 120 minutes after receipt of any such call.
2. The Services Provider shall render safe the area surrounding the Assets in question described in paragraph 1 above by carrying out all activities it deems necessary or desirable to so render the area safe. Emergency services shall include all services necessary to render the emergency safe, (including but not limited to: restricting public access to the immediate area, clearing roadways of debris, etc.) such that it no longer poses a hazard to the general public.
3. The Services Recipient may change any of the contact names or telephone numbers in this Schedule "A" at any time by giving the Services Provider notice of such change in accordance with Section 10 of this Agreement.





**Ontario Energy Board (Board Staff) INTERROGATORY # 9**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment**
- b. Hydro One Submission dated September 10, 2014**
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility**
- d. Staff IRR 7 (ii) on Crossings**
- e. Suncor Argument-in-chief dated August 25, 2014**

**Preamble:**

Please refer to Exhibit I-1-1 for Preamble.

- ix. Would an agreement between Suncor and Hydro One impact any other third party, including NextEra?

**Response**

NextEra will not be impacted by this agreement. However, the proposed Perpendicular Crossing Agreement between Suncor and Hydro One Distribution may impact some third parties, mainly telecommunication companies with joint use agreements with Hydro One Networks Inc. For example, if Hydro One Distribution's poles with third party attachments are relocated or removed altogether, the attached assets would also have to be relocated, perhaps underground, as well.

In these cases, the joint use agreement between each of these third parties and Hydro One Distribution is already in place and the related costs of relocation would 'flow' through to Suncor. Generally, where Suncor is constructing its facilities, however, telecommunication companies have already installed their assets underground, so there are few joint use arrangements for Hydro One Distribution structures there.

**Ontario Energy Board (Board Staff) INTERROGATORY # 10**

**Interrogatory**

**Reference:**

- a. Exh. H/ Tab 3/ Sch. 1/ Customer Impact Assessment**
- b. Hydro One Submission dated September 10, 2014**
- c. Staff IRR 5 (i) & (ii) on Cost Responsibility**
- d. Staff IRR 7 (ii) on Crossings**
- e. Suncor Argument-in-chief dated August 25, 2014**

**Preamble:**

Please refer to Exhibit I-1-1 for Preamble.

- x. If there are operational and safety issues associated with distribution or transmission facilities please confirm that these fall under the Ontario Safety Authority's mandate.

**Response**

Yes, operational and safety issues associated with electricity facilities fall within the jurisdiction of the Ontario Electrical Safety Authority.