

ONTARIO ENERGY BOARD

EB-2014-0355

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 41(9) of the *Electricity Act, 1998* (as amended) establishing the location of the applicant's distribution facilities within certain streets and highways owned by the Corporation of the County of Lambton, all as set out in this application.

ARGUMENT IN CHIEF

1 In accordance with the Ontario Energy Board's ("**Board's**") Procedural Order No. 2 dated April
2 2, 2015, Suncor Energy Products Inc., ("**Suncor**") makes this written submission in support of its
3 application for an order or orders pursuant to Section 41(9) of the *Electricity Act, 1998* (as
4 amended) ("**Electricity Act**") establishing the location of a portion of the distribution system
5 associated with the Cedar Point II Wind Energy Project ("**Project**" or "**Cedar Point**") within
6 certain streets and highways owned by the Corporation of the County of Lambton ("**Lambton**
7 **County**"). Suncor has brought this application due to Lambton County Council's sustained
8 opposition to wind farm development and refusal to agree to wind farm distribution system
9 locations in Lambton County streets and highways as detailed below in section 3.4 of this
10 Argument in Chief.

11 **1.0 THE PROJECT**

12 The Project is described in Exhibit B, Tab 2, Schedule 1 of Suncor's November 24, 2014
13 application ("**Application**") as updated by Exhibit B, Tab 1, Schedule 1 and Exhibit B, Tab 2,
14 Schedule 1 of Suncor's Further Evidence filed March 6, 2015¹ ("**Further Evidence**"). It is being
15 developed pursuant to a Feed-in Tariff ("**FIT**") contract awarded to Suncor by the Ontario Power
16 Authority ("**OPA**") under the Ontario FIT Program on July 6, 2011.

¹ A copy of which was also filed as Exhibit KTC1.4 during the Technical Conference in this matter that took place on April 22, 2015 ("**Technical Conference**").

1 Suncor was issued Renewable Energy Approval Number 6914-9L5JBB ("**REA**") for the Project
2 on August 22, 2014². As a result of the REA being issued, the Project is approved for 55 wind
3 turbine locations in Lambton County, 46 of which will be built (collectively, the "**Generation**
4 **Facilities**"). The Generation Facilities will have a total nameplate capacity of up to 100 MW. To
5 convey the electricity generated by the Generation Facilities to a transmission system, which is
6 in turn connected to the IESO-controlled grid, Suncor plans to construct certain distribution
7 facilities. The distribution facilities will include approximately 124 km of 34.5 kV distribution
8 lines located on private property and municipal and county owned streets and highways, which
9 will convey electricity from each of the wind turbines to a transformer substation, from which a
10 transmission system will convey the electricity to the IESO-controlled grid.

11 As set out in Exhibit B, Tab 2, Schedule 1 of Suncor's Further Evidence, as a Distributor, Suncor
12 seeks to install approximately 3.468 km of these distribution facilities ("**Distribution System**")
13 in streets and highways owned by Lambton County (collectively, the "**Streets and Highways**" or
14 "**Relevant Road Allowances**").

15 In choosing to locate 3.468 km of the distribution facilities System within the Streets and
16 Highways, Suncor relies on its right pursuant to Section 41 of the *Electricity Act* to locate
17 distribution facilities within any public street or highway without the consent of the owner.
18 However, since Council of Lambton County has not, to date, agreed on the location of the
19 Distribution System within the Streets and Highways, Section 41(9) of the *Electricity Act* states
20 that the Board shall determine such location. Because of the limited scope of Section 41(9), the
21 only issue before the Boards is determining that location.

22 **2.0 PROPOSAL FOR LOCATION OF THE DISTRIBUTION SYSTEM**

23 Suncor proposes that the location of the Distribution System within the Streets and Highways
24 should be as follows:

² Exhibit B, Tab 4, Schedule 1, Appendix F of the Application.

- 1 • The Distribution System shall generally be located in the Relevant Road Allowances
2 listed in Exhibit B, Tab 2, Schedule 1 of Suncor's Further Evidence filed on March 6,
3 2015.
- 4 • Where practicable, and where it meets all applicable engineering, environmental and
5 health and safety standards, the Distribution System lines shall be more particularly
6 located substantially in accordance with the plans set out in Exhibit B, Tab 1, Schedule 1
7 of Suncor's Further Evidence, filed on March 6, 2015.

8 **3.0 RATIONALE FOR PROPOSED LOCATION**

9 The rationale for the final proposed locations is minimization of the use of Lambton County
10 streets and highways based on access to private land and existing utilities as set out in the Plan
11 and Profile Drawings located at Exhibit B, Tab 1, Schedule 1 of Suncor's Further Evidence filed
12 March 6, 2015. Suncor is working with utilities to ensure existing utilities are not impacted by
13 Suncor's proposed distribution infrastructure. When considering which side of the road to use
14 Suncor reviewed existing tree locations and utility locations. Suncor also will be directionally
15 drilling beneath all existing municipal drains and existing private entrances within the road
16 allowance to minimize disruption.

17 The REA application for the Project included a number of reports which considered the potential
18 impacts of, and constraints applicable to, the Distribution System within the Streets and
19 Highways and the Project area, including the following:

- 20 • the Natural Heritage Assessment Reports (which assessed potential natural
21 heritage features in the Project area and developed mitigation measures for any
22 potential impacts on any such features identified as significant);
- 23 • the Consultation Report (which included consultation on environmental, social,
24 technical and economic aspects of the Project with regulatory agencies, the local
25 community and the Municipality);

- 1 • the Water Assessment and Water Body Report (which assessed water bodies in
2 the Project area and developed mitigation measures for any potential impacts on
3 any such features identified as significant);
- 4 • the Archeological Assessment Reports, specifically the Heritage Assessment,
5 Stage 1 and 2 Archeological Assessment Reports (which surveyed for
6 archaeological sites in the Project area and developed mitigation measures for any
7 potential impacts on any such sites); and
- 8 • the Modification Report (which assessed effects of a minor project design change
9 consisting of a change/addition to collector line, access road and transmission line
10 routes to avoid a newly evaluated Provincially Significant Wetland complex).³

11 The REA reports listed above, among others, identified significant environmental, social and
12 other features in the Project area in the vicinity of the Distribution System, determined
13 appropriate setbacks from those features, and proposed additional mitigation measures where
14 appropriate. The proposed location of the Distribution System was determined through an
15 iterative approach and based on an extensive environmental assessment and community
16 consultation process conducted in accordance with Ontario Regulation 359/09. As a result, the
17 proposed locations of the Distribution System within the Streets and Highways reflect the best
18 balance of environmental, social, technical and economic considerations.

19 **3.1 TECHNICAL CONCERNS RAISED BY LAMBTON COUNTY HAVE BEEN** 20 **ADDRESSED**

21 In its request for Intervenor Status dated February 23, 2015, Lambton County expressed concern
22 about Suncor's ability to accurately and reliably locate its proposed distribution lines following
23 construction and requested information about setbacks from current and future users of the
24 Streets and Highways.

³ The above-mentioned reports, and additional reports submitted as part of the Project's REA application, are publicly available at <http://www.suncor.com/en/about/4797.aspx>.

1 Suncor has addressed these concerns in its responses to interrogatories filed March 26, 2015 and
2 during the Technical Conference on April 22, 2015 as detailed below.

3 Lambton County requested information regarding minimum separation distances between the
4 underground electrical cables that will make up the Distribution System in the Streets and
5 Highways and other underground infrastructure. These minimum separation distances are set out
6 in Table 2 of the most current version of Canadian Standards Association ("CSA") Standard
7 C22.3 No. 7, which was filed as confidential Exhibit No. KTCX1.1⁴ during the Technical
8 Conference in this matter that took place on April 22, 2015 ("**Technical Conference**"). The
9 minimum separation distances set out in this CSA Standard are adopted by reference in Ontario
10 Regulation 22/04, *Electrical Distribution Safety*, made under the *Electricity Act, 2008*, and
11 further explained in the Electrical Safety Authority ("**ESA**") document titled *Guideline for*
12 *Proximity to Distribution Lines*, dated January 12, 2015, a copy of which was filed as Exhibit
13 No. KTC1.7 during the Technical Conference.

14 Lambton County also requested information regarding minimum safe working distances from the
15 underground electrical cables that will make up the Distribution System in the Streets and
16 Highways. These distances are set out in the ESA and Technical Standards & Safety Authority
17 ("**TSSA**") document titled *Guideline for Excavation in the Vicinity of Utility Lines*⁵ ("*Guideline*
18 *for Excavation*") and procedures set out in the *Ontario Underground Infrastructure Notification*
19 *System Act, 2012* S.O. 2012, c.4 ("**Ontario One Call**").

20 Finally, concerns regarding the placement of future infrastructure are beyond the scope of this
21 proceeding. Once built, the Distribution System becomes part of the existing infrastructure and
22 therefore should be afforded the same rights and obligations as any other infrastructure that
23 occupies a municipal roadway⁶.

24 **3.2 LAMBTON COUNTY HAS NOT PROPOSED ALTERNATIVE LOCATIONS**

⁴ Table 2 was filed confidentially due to copyright restrictions.

⁵ A copy of which was filed as Exhibit KTC1.6 during the Technical Conference.

⁶ See Decision and Order dated February 26, 2015 in EB-2014-0022 at page 12.

1 In its response, dated March 26, 2015 to Board Staff Interrogatory #3iv., Lambton County
2 confirmed that it does not have an alternate proposed location for the Distribution System.

3 **3.3 LAMBTON COUNTY STAFF HAVE BEEN CONSULTED**

4 Suncor's consultation with Lambton County staff regarding the Distribution System and a Road
5 Use Agreement ("**RUA**"), which would contain Lambton County's agreement to the location of
6 the Distribution System in the Streets and Highways, is summarized in the Chronology of Events
7 filed as Exhibit B, Tab 4, Schedule 1 of the Application. As described in Suncor's response to
8 Board Staff Interrogatory No. 2ii. filed March 26, 2015, negotiations continued after the
9 Application was filed on November 24, 2014. A draft RUA was originally posted on Lambton
10 County's website on January 5, 2015 for a 30-day public review. Suncor determined that four
11 transmission poles required relocation further away from County property into private land due
12 to the existence of existing infrastructure which was recently constructed. Unfortunately this
13 change caused County Committee to halt the public review process of the RUA on January 21,
14 2015.

15 An updated version of the RUA was posted on Lambton County's website for a 30-day public
16 review on March 23, 2015. Suncor's understanding of Lambton County's process is that after
17 this public review period, the RUA needs to be endorsed by Lambton County Committee and
18 then voted on by Lambton County Council prior to execution. While Suncor is prepared to
19 continue to pursue execution of the RUA, as detailed in Suncor's response to Board Staff
20 Interrogatory No. 3v. filed March 26, 2015, Suncor does not anticipate that Lambton County
21 Council will vote in favour of executing the RUA on a timeline that would permit Suncor to
22 meet its FIT Contract obligation.

23 Although Lambton County Staff indicated some level of satisfaction with answers provided by
24 Suncor during the Technical Conference, they did not, and could not provide Suncor with any
25 certainty as to whether Lambton County Council would ultimately agree to the location of the
26 Distribution System, or execute the RUA⁷.

⁷ see transcript of Technical Conference date April 22, 2015 at pages 18 and 19.

3.4 LAMBTON COUNTY COUNCIL HAS NOT AGREED TO THE LOCATION OF THE DISTRIBUTION SYSTEM

Despite working with Lambton County staff, to date, Lambton County Council has neither agreed to the proposed location of the Distribution System or withdrawn from this hearing. As such, Suncor requires an order from the Board determining the location of the Distribution System.

Notwithstanding its statutory rights, as more particularly described in Exhibit B, Tab 3, Schedule 1, Suncor has sought, as is commonplace in Ontario, to negotiate an RUA with Lambton County that would, among other things include agreement with respect to the location, construction, operation and maintenance of the Distribution System within the Streets and Highways.

To date, Suncor and Lambton County have not been able to enter into an RUA or otherwise reach agreement as to the location of the Distribution System within the Streets and Highways.

Because Suncor and Lambton County have not been able to reach an agreement with respect to the location of the Distribution System within the Streets and Highways, Suncor requests that the Board issue an order or orders, pursuant to Section 41(9) of the *Electricity Act*, determining the location of the Distribution System within the Streets and Highways.

Suncor does not believe that a resolution of the County's technical concerns with County Staff would obviate the need for the present proceeding. As set out on pages 1 and 2 of Exhibit B, Tab 4, Schedule 1, Chronology of Events of the Application, Lambton County Council has historically taken positions against the development of wind farms in its jurisdiction. On February 12, 2014, Lambton County Council passed a motion declaring Lambton County to be an unwilling host for wind turbines⁸. This stance continues on page 2 of the draft RUA that is currently posted on Lambton County's website⁹. Lambton County has also actively opposed

⁸ Exhibit B, Tab 4, Schedule 1, Appendix D, page 7 of Application (February 12, 2014 Lambton County Council Meeting Minutes).

⁹ Recital I of the draft RUA accessed at www.lambtononline.ca on April 27, 2015 reads as follows: "that the County, through motion of Council, has declared its position as an unwilling host of industrial wind turbines and that any approval to enter into this Agreement to protect the County's interests does not change its position as an unwilling host".

wind farm development within its jurisdiction by contributing \$60,000 to anti-wind farm litigation and appealing the REA for the Project.¹⁰ County Council was also unwilling to execute an RUA and thus approve of the locations of distribution facilities of at least one other proposed wind facility within the County. Finally, while Suncor may receive approval from County Staff, Suncor does not believe that it will receive approval or agreement from County Council, as was the case in EB-2014-0139.¹¹ On page 5 of EB-2014-0139, the Board noted that the "County acknowledged the existence of multiple County staff reports which endorsed the signing of the RUA, but referred to them as "nothing more than the opinion of certain unelected individuals"". Suncor has no reason to believe that County Council would act any differently in the present case.

4.0 ORDER SOUGHT

Suncor therefore requests that the Board, pursuant to Section 41(9) of the *Electricity Act*, issue an order determining the location of the Distribution System within the Streets and Highways as follows:

- The Distribution System shall generally be located in the Relevant Road Allowances listed in Exhibit B, Tab 2, Schedule 1 of Suncor's Further Evidence filed on March 6, 2015.
- Where practicable, and where it meets all applicable engineering, environmental and health and safety standards, the Distribution System lines shall be more particularly located substantially in accordance with the plans set out in Exhibit B, Tab 1, Schedule 1 of Suncor's Further Evidence, filed on March 6, 2015.

Suncor also requests that the Board, in hearing this application, be guided by its mandate, under Section 1(1)(5) of the *Ontario Energy Board Act, 1998* "promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems

¹⁰ Exhibit B, Tab 4, Schedule 1, Page 2 of 4 of Chronology of Events of Application.

¹¹ Exhibit B, Tab 3, Schedule 1, Appendix D of the Application (Decision in EB-2014-0139).

1 and distribution systems to accommodate the connection of renewable energy generation
2 facilities".

Dated at Toronto, Ontario, this 27th day of April, 2015.

All of which is respectfully submitted by:

Suncor Energy Products Inc.

By its counsel

Fogler, Rubinoff LLP

Per: _____

Albert Engel