



COUNTY OF
LAMBTON

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April 30, 2015

Ontario Energy Board
P.O. Box 2319
2300 Young Street, 27th Floor
Toronto, ON M4P 1E4

File No. EB-2014-0355

Attn: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: County of Lambton Request for Deferral of Final Decision

Please accept this correspondence from the County of Lambton with respect to the timelines established by the Board in these proceedings. The County of Lambton is hereby officially requesting that the Board defer from making any ruling until after Lambton County Council's meeting of Wednesday June 03, 2015. On that date, County Council will hear and presumably make a decision on the merits of the potential Road Use Agreement ("RUA") as between the parties.

The basis for this request can be identified as consisting of three components:

1. Suncor has unclean hands and has created at least some of the delay in this and related proceedings through its own actions;
2. As of April 29, the parties have finally come to terms on the potential Road Use Agreement ("RUA"), and so even at the time of Suncor's most recent submissions, Suncor itself could not accurately say that it was ready to come to agreement. The County has attached a substantially redacted copy of the correspondence received on April 29 from Suncor as proof of same; and
3. It is axiomatic that any deal reached between parties is a better basis for future co-operation, collaboration and interaction, than is an imposed decision from a third party, even if that third party is as and respected enlightened as the OEB.

Suncor's Unclean Hands

By its own admission, at lines 10-14 of page 6 of its Argument-in-Chief, Suncor made unilateral changes, without appropriate notice or approval of the County, which had already initiated a public review period for the draft RUA. This change, which was only brought to light during the related Environmental Review Tribunal proceedings, proposed fundamental and material changes to the draft RUA as it changed the location of the proposed electrical infrastructure. The County's public consultation process was accordingly compromised. The process was restarted with the modified version of the RUA, and has only just been completed on April 21, 2015.

Negotiations Continuing After Final Submissions

Suncor's Argument-in-Chief suggests at lines 18-20 of page 2, that somehow the County has failed to agree on a location for the distribution system, and that accordingly the OEB should now make a determination on this application. In contrast to this characterization, the enclosed email from Mark Kozak, of Suncor, is dated April 29, 2015 wherein the un-redacted portion clearly indicates that 48 hours after Suncor's Argument-in-Chief was filed, the parties continued to negotiate critical terms of the potential RUA. In light of this, it is monumentally and self-evidently unfair to suggest that the County is somehow unilaterally delaying a potential agreement that was still unfinished, at the time of Suncor's Argument-in-Chief was filed. The County of Lambton staff were, and still are, negotiating in good faith, working towards a potentially binding deal that would address the outstanding issues, including infrastructure location.

From today's date, the next Committee meeting of elected officials with jurisdiction over road issues is scheduled for May 20, 2015, and the next meeting of County Council thereafter is June 03, 2015. By way of this correspondence, the County undertakes to inform the OEB and Suncor of the outcome of said Council deliberation no later than June 04, 2015.

Benefits of Allowing for Public Process

Assuming Suncor is in fact "prepared to continue to pursue execution of the RUA" (Line 18, page 6), then there is every reason to await the decision of the elected officials on June 03, 2015. This is particularly the case given that County Council would have already had the opportunity to consider the RUA, but for the unilateral changes made by Suncor to the agreement back in January of 2015, (it is a Council requirement that public consultation be complete before all pertinent information and reports are submitted to it for consideration).

In the event of a non-decision or negative decision by County Council, then the OEB will have all of the evidence before it to exercise its decision-making authority pursuant to statute. The OEB will have full knowledge of Council's deliberations by June 4, 2015, and will be in a position to proceed accordingly at that time.

The County of Lambton asks only that its accountable, democratic process be given the opportunity to fully play out, prior to a third party potentially dictating terms, particularly when the Applicant is at least partially the author of the delay in the County's process.

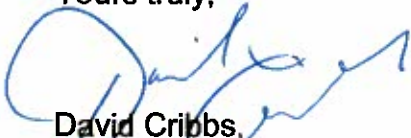
Surely the administration of justice and general public faith in the openness of these proceedings will be brought into disrepute if a private corporation can cause delay, and then circumvent both a potentially negotiated solution and a democratic process by pleading that the government entity does not move quickly enough for its tastes.

The County acknowledges that its staff cannot and does not provide any degree of certainty as to an ultimate decision of County Council, and makes no submission as to the likelihood of any given outcome when the matter is heard on its merits. That being said, there is no factual basis for Suncor's anticipation of a negative vote. The current County Council has not yet considered a RUA (the decisions referred to by the Applicant were made by the previous County Council, which had a different composition) and so there is no relevant voting history to assess.

Lastly, based on prior experience, County engineering staff estimate that the actual time required to construct the underground infrastructure in the County's road allowance is approximately two weeks, as the topography is flat and straight, and most of the digging will be installed using trenching and directional drill method, which is relatively expeditious. If it is correct that the construction can be completed in so short a time-frame and the actual proportion of collection line in the County right-of-way being discussed here is a small proportion to the overall required installations on other municipal rights-of-way and private properties, it is difficult to see what actual prejudice the Applicant will suffer in having to wait until June 03, 2015 for a potentially negotiated settlement.

I trust the foregoing to be generally satisfactory.

Yours truly,



David Cribbs,
County Solicitor

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David Cribbs

From: Kozak, Mark <makozak@suncor.com>
Sent: April 29, 2015 2:23 PM
To: Jason Cole; David Cribbs
Cc: Scott, Christopher A
Subject: Cedar Point Wind Project - Road Use Agreement
Attachments: 2015-04-29 CP II LP RUA with County of Lambton - Proposed Changes from Public blackline.docx

Good afternoon Jason,

Please find the attached updated RUA in blackline which addresses the County's requests from our meeting on Monday. Section 9, 50 and the title page to Schedule B have had revisions. Please note that we did not accept the revision to Section

Redacted

Regards,

Mark Kozak
Project Manager, Renewable Energy | Suncor Energy Products Inc.
647-467-8461 | makozak@suncor.com

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