



Fogler, Rubinoff LLP

Lawyers

77 King Street West  
Suite 3000, PO Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

t: 416.864.9700 | f: 416.941.8852  
foglers.com

May 5, 2015

Reply To: Albert M. Engel  
Direct Dial: 416.864.7602  
E-mail: aengel@foglers.com  
Our File No. 14/7081

**VIA EMAIL, RESS & COURIER**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON  
M4P 1E4

Attention: Board Secretary

Dear Ms. Walli:

**Re: EB-2014-0355 – Response to Lambton County ("County") Letter dated April 30, 2015**

---

We are Counsel to Suncor Energy Products Inc. ("Suncor") in EB-2014-0355 ("Application"). We write in response to the County's letter dated April 30, 2015 ("County Letter") and the Ontario Energy Board's ("Board") letter dated May 4, 2015 ("Board Letter").

In the County Letter, despite the timelines set out in Procedural Order No. 2 ("PO2"), the County requested that the Board defer from determining the location of 3.468 km of distribution lines in County-owned streets and highways ("Locations") until after County Council's meeting of Wednesday June 3, 2015 at which time County Council "will hear and presumably make a decision on the merits of a potential Road Use Agreement ("RUA") as between the parties". Suncor's understanding of the County's process is that County Committee needs to approve of the RUA before it can be put on the agenda for County Council to consider it. As mentioned on page 2 of the County Letter, County Committee meets next on May 20, 2015. If County Committee approves of the RUA on May 20, 2015, then the earliest County Council would be prepared to deliberate on the matter would be at its June 3, 2015 meeting.

Although the RUA is not a legal prerequisite to the County agreeing to the Locations, the County has refused to agree to the Locations except as part of an RUA. As described by Mr. Cribbs himself at the Technical Conference that was held in respect of

this matter on April 22, 2015, "the road use agreement goes well beyond, frankly, the jurisdiction of the Ontario Energy Board"<sup>1</sup>. For instance, the change made to the location of 4 poles that the County characterizes as Suncor's "unclean hands", was unrelated to the Locations that are the subject matter of this Application. Rather, they were associated with transmission line poles that were already to be located on private property, that needed to be moved approximately 7m further away from County property, after Suncor identified previously unknown underground obstacles. Similarly, the negotiations regarding the RUA that continued on April 29, 2015 after Suncor submitted its Argument in Chief in this matter on April 27, 2015 were also unrelated to the Locations that are the subject matter of this Application. Instead, they were related to specific clauses that would survive in the event of termination of the RUA. The County has consistently refused to separate agreement to the Locations from agreement to the RUA since October 9, 2014,<sup>2</sup> and as a result has succeeded in continuously delaying the construction of the distribution lines that are the subject matter of this Application.

Suncor agrees that if County Committee approves the RUA on May 20, 2015, and County Council subsequently approves of the RUA on June 3, 2015, thereby agreeing to, among other things, the Locations, continuing with this Application will likely no longer be necessary. However, if County Committee and County Council do not approve of the RUA, or otherwise agree to the Locations on May 20, 2015 and June 3, 2014, respectively, and the Board has not already issued its decision in this Application, these actions will be further evidence of disagreement between Suncor and the County in support of this Application.

As was evident in the Jericho Wind, LP OEB proceeding EB-2014-0139, County Committee and County Council have a history of ignoring County staff recommendations to enter into an RUA, even where there is no dispute between County staff and the wind developer regarding the location of the electrical infrastructure within County road allowances. In that proceeding, Lambton County requested an adjournment to the proceeding to accommodate additional municipal consultation and deliberations; however, despite making that request, Council never tabled the applicant's proposed location for consideration or approval despite County staff's recommendations. While Suncor remains hopeful that the County will agree to the RUA as proposed, it cannot ignore the fact that history indicates otherwise.

Contrary to the suggestion in the Board Letter, the "County" did not come to terms with Suncor on the potential RUA on April 29, 2015. Rather, County Staff came to terms with Suncor on the potential RUA. While County Staff agreement to the RUA is

---

<sup>1</sup> Page 19, lines 19 and 20 of the transcript of April 22, 2015 Technical Conference in EB-2014-0355.

<sup>2</sup> On October 9, 2014, County staff denied Suncor's request to have its proposed Locations approved by a committee of Lambton County Council (Exhibit B, Tab 4, Schedule 1, Appendix S of November 24, 2014 Application).

certainly a welcome development, based on the precedent described above, it does not give Suncor any assurance that the RUA will be approved by County Council. Ultimately, this Application will continue to be necessary for Suncor until such time as County Council approves of the RUA.

Suncor is disappointed that the Board Letter suspended the dates for the filing of submissions and reply submissions set out in PO2. The County Letter only requested that the decision of the Board be deferred. Suncor requests that the May 4, 2015 date for filing of final argument by Intervenors and OEB staff set out in PO2 be rescheduled to May 8, 2015 and that Suncor's date for filing any reply submissions be reinstated for May 11, 2015, subject to any additional evidence that may come to light on May 20, 2015 and/or June 3, 2015.

In the County Letter, the County essentially requested an opportunity to file additional evidence on June 4, 2015 regarding County Council's June 3, 2015 deliberations on the RUA (assuming County Committee approves the RUA on May 20, 2015). Suncor hereby requests that the Board determine the Locations that are the subject of this Application as soon as possible, to minimize any further prejudicial delays to Suncor, in the event additional evidence of a disagreement arises on May 20 or June 3, 2015.

Yours truly,

**FOGLER, RUBINOFF LLP**

Albert M. Engel