



**EB-2008-0310**

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

**AND IN THE MATTER OF** an application pursuant to  
subsection 86(2) of the *Ontario Energy Board Act, 1998* by  
the Town of Essex for leave to acquire shares of E.L.K  
Energy Inc.

**BEFORE:** Gordon Kaiser  
Vice-Chair and Presiding Member

Paul Vlahos  
Member

Ken Quesnelle  
Member

## **ORDER**

The Town of Essex ("Essex") filed an application with the Ontario Energy Board, received on September 18, 2008, under subsection 86(2) of the *Ontario Energy Board Act* (the "Act"), seeking leave to acquire all of the outstanding shares of E.L.K. Energy Inc. ("ELK"). The Board has assigned the application file number EB-2008-0310.

Essex currently holds 38% of the issued and outstanding common shares in ELK. Essex has entered into a Share Purchase Agreement with the other two shareholders of ELK, namely the Town of Kingsville ("Kingsville"), a 38% shareholder, and the Town of Lakeshore ("Lakeshore"), a 24% shareholder, whereby Essex intends to purchase all of the common shares of ELK held by Kingsville and Lakeshore. The share purchase transaction will make Essex the sole shareholder of ELK.

## **The Proceeding**

A Notice of Application and Hearing was issued on October 10, 2008 and published in the affected service areas as directed by the Board on October 18, 2008.

The Board granted School Energy Coalition and Essex Powerlines Corporation intervenor status and Enwin Utilities observer status in this proceeding. In addition, the Board found School Energy Coalition to be eligible for costs in this proceeding.

Procedural Order No. 1 was issued on November 6, 2008. Procedural Order No.1 stated that the Board has decided to proceed by way of written hearing and reiterated that Board has decided to consider whether subsection 86(2) of the Act applies to the proposed transaction as a threshold issue. The Board acknowledged that SEC has made a submission on this threshold issue and indicated that prior to proceeding with the application, the Board would like to receive submissions from other parties on this threshold issue.

After considering parties submissions, on December 31, 2008 the Board issued a majority decision on the threshold issue. The majority found that the Board has jurisdiction and authority to review this application pursuant to Section 86 of the *Ontario Energy Board Act*. The decision included a minority dissent and a procedural order indicating that the Board would hold an oral hearing on January 19, 2009 to hear submissions from all interested parties. The Board made provision for interrogatories and responses to interrogatories. School Energy Coalition and Board staff filed interrogatories and the applicant filed responses to the interrogatories.

## **Findings**

The Board made an oral decision on January 19, 2009 which granted leave to Essex to acquire the remaining shares of ELK Energy. As requested by the applicant during the oral hearing, the leave is granted effective January 31, 2009.

The Board's approval has been granted on the basis of two undertakings given by the counsel for Essex. The first undertaking is that Essex will convert \$2 million of the \$3.9 million shareholder loan to equity and pay over that amount upon the closing of the

transaction. The second undertaking is that none of the acquisition premium paid by Essex will flow through to rate base, whatever that amount happens to be when this transaction closes.

The full decision with reasons is available in the transcript of the proceeding beginning at page 72.

#### **THE BOARD ORDERS THAT:**

1. The Town of Essex is hereby granted leave to acquire the remaining shares of ELK Energy Inc. pursuant to subsection 86(2) of the Act effective January 31, 2009..
2. The Town of Essex shall promptly notify the Board of the completion of the transaction.

#### **COST CLAIMS**

A decision regarding cost awards will be issued at a later date. Eligible parties shall submit their cost claims by **February 9, 2009**. A copy of the cost claim must be filed with the Board and one copy is to be served on Town of Essex. The cost claims must be prepared in accordance with section 10 of the Board's Practice Direction on Cost Awards.

The Town of Essex will have until **February 23, 2009** to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the party against whose claim the objection is being made.

Any party whose cost claim was objected to will have until **March 9, 2009** to make a reply submission as to why their cost claim should be allowed. A copy of the submission must be filed with the Board and one copy is to be served on Town of Essex.

**DATED** at Toronto, January 20, 2009

**ONTARIO ENERGY BOARD**

*Original signed by*

Gordon Kaiser  
Vice-Chair and Presiding Member  
On behalf of the Panel