



Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
Scotia Plaza, 40 King Street West
Toronto, Ontario, Canada M5H 3Y4
tel.: (416) 367-6000 fax: (416) 367-6749
www.blgcanada.com

ANDREW SMITH/CHRISTINE E. LONG
direct tel.: (416) 367-6734/(416) 367-6683
direct fax: (416) 682-2836/(416) 361-2770
e-mail: ansmith@blgcanada.com/clong@blgcanada.com

November 23, 2007

Via Fax, E-mail and Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, Suite 2601
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Notice of Proposal Under Section 81 of the *Ontario Energy Board Act, 1998* as submitted by Kruger Energy Inc. Board File Number EB-2007-0691

We write in response to the November 21, 2007 letter of the Board Secretary advising that on November 20, 2007, Invenergy Wind Canada ULC ("Invenergy") applied for late intervenor status in the above-stated proceeding.

While Kruger Energy Inc. ("KEI") remains committed to working together with all developers in the Chatham-Kent area, KEI must oppose the granting of late intervenor status to Invenergy. Invenergy has not demonstrated that it will provide evidence that falls within the parameters of the section 81 review and allowing an intervention at this stage of the proceeding would undoubtedly delay the review process. Consequently, while Invenergy has not asked for costs of its participation, KEI would object to any claim made for costs as well.

Section 82(3) of the *Ontario Energy Board Act, 1998* (the "Act") states that the "Board shall make an order approving a proposal described in section 81 if it determines that the impact of the proposal would not adversely affect the development and maintenance of a competitive market." This test is the only issue which is to be considered by the Ontario Energy Board (the "Board") in its review of the section 81 proposal.

Invenergy has stated that it has projects in the area surrounding the proposed substation (the "Substation") which is the subject of the proposal (the "Proposal"). However, Invenergy has not delineated how the Substation would impede competition. KEI expects that Invenergy would have made representations as to the evidence related to competition it would intend to file with the Board given the submission of the intervention letter at the very end of the review process.

Invenergy states that it has "both experience and expertise to make submissions to assist the Board in the determination of the economic prudence and cost effectiveness of the Kruger proposal." The economic prudence and cost effectiveness of the Proposal are not issues before the Board in this proceeding.



Invenenergy also states in its letter of intervention that it seeks to ensure that it can obtain access to the Substation. KEI has set out in its answers to interrogatories the process and criteria which will be used to evaluate potential projects for the Substation. The purpose of the section 81 review is not for the Board to make an Order as to which parties can connect to the Substation.

Invenenergy also states that it intends to actively participate in these proceedings if granted late intervenor status when necessary and to “reserve the right to address any issues it deems relevant and material to its interests.” The Board’s letter advising of the late intervention clearly states that intervenors must accept the record as it now stands. Procedural Order No. 1 requires that intervenors and Board Staff who wish to submit evidence, must file such evidence with the Board and deliver it to KEI and all intervenors on or before Monday, November 26, 2007. KEI takes the position that the deadlines contained in Procedural Order No. 1 should stand.

KEI filed its notice of proposal with the Board on July 17, 2007. On September 13, 2007, the Board issued a notice of review. Pursuant to the Board’s Notice of Written Hearing published on September 25, 2007, KEI published the Notice of Written Hearing as directed in the appropriate newspaper on September 29, 2007. Publication of the Notice of Written Hearing in the Chatham Daily News allowed interested parties, including those with potential projects in the area, the opportunity to participate in the review process within the timeframes set out.

By the Board establishing application performance standards, applicants expect that their application, often the first step in a long planning and building process, will be decided within a defined period of time. The performance standard for a section 81 notice with intervenors is 170 days with 35 days allotted for a decision to be contemplated and rendered. Therefore within 135 days, the record should be complete. As of November 26, 2007, 132 days will have passed, with additional time still required for KEI to respond to evidence filed. A further delay will take the Application further outside the Board’s performance standard. Section 82(1) specifically states that the Board shall “expeditiously proceed to review the proposal.” KEI does not support a late intervention (of almost 2 months) delaying the process.

KEI has supported an open and transparent review of the Proposal and would welcome the opportunity to work with those interested in connecting to the Substation, including Invenenergy. However it does not support additional delay as a result of a late intervention request where there has been no confirmation that any issues raised by Invenenergy will fall within the Board’s mandated scope of review under section 81.

Yours very truly,

Borden Ladner Gervais LLP

ORIGINAL SIGNED BY ANDREW SMITH

Andrew Smith

cc. Guy Paquette, Kruger Energy Inc. (by e-mail only)
Hon. Joe Fontana, Allus Power Inc. (by e-mail only)
Jim Hogan, Chatham-Kent Hydro Inc. (by e-mail only)
Dave Kenney, Chatham-Kent Hydro Inc. (by e-mail only)
Miriam Heinz, Ontario Power Authority (by e-mail only)
Carl Burrell, Independent Electricity System Operator (by e-mail only)
Glen MacDonald, Hydro One Networks (by e-mail only)
Mark Bell, Invenenergy Canada (by e-mail only)