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VIA E-MAIL

October 20, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
PO Box 2319, 27th Floor
Toronto, ON
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Dear Ms. Walli:

Re: Kruger Energy Inc.
Chatham and Port Alma Projects

We are writing on behalf of Kruger Energy Inc. ("**KEI**") regarding its plans to develop, through Kruger Energy Chatham Limited Partnership ("**KEC**"), a wind farm in the Municipality of Chatham-Kent ("**Chatham Project**").

The Chatham Project is a 44 turbine, 101.2 megawatt ("**MW**") wind farm that will be located adjacent to the Port Alma Wind Farm ("**Port Alma Project**"). It is expected to commence commercial operation in December 2010, underpinned by a 20-year Renewable Energy Supply III Contact ("**RES Contract**") between KEI and the Ontario Power Authority. It is expected that this contract will be assigned to KEC.

The Port Alma Project is a 44 turbine, 101.2 MW wind farm that was developed by KEI, through the Kruger Energy Port Alma Limited Partnership ("**KEPA**"), and which went into commercial operation in October, 2008. It is being operated by KEI, pursuant to an agreement between KEI and KEPA.

KEI requests that the Ontario Energy Board ("**Board**") determine and/or confirm that the ownership and operation of the transmission component of the Chatham Project will not trigger a requirement for an authorization under clause 57(b) of the OEB Act nor trigger a similar requirement in respect of the transmission component of the Port Alma Project, as more particularly described below.

1. **Project Background**

KEI is a wholly-owned subsidiary of Kruger Inc. KEC and KEPA are limited partnerships whose general partners are wholly-owned direct and indirect subsidiaries of Kruger Inc., respectively, and affiliates of KEI. Kruger Inc. is also a major Canadian producer of lumber, paper and related products, as well as wine and spirits. Through KEI, Kruger Inc. also develops and operates renewable energy projects in Canada and the United States.

The sole purpose of KEC and KEPA is to hold the assets of the Chatham Project and the Port Alma Project, respectively, thereby facilitating the non-recourse, project financing of these two projects. KEI is the operator of the Port Alma Project and will be the operator of the Chatham Project upon commencement of its commercial operation. In these capacities, KEI provides engineering, technical, maintenance and other operational services – and the management and administration of such services – by personnel assigned full time to the projects. KEI is currently providing these service to KEPA pursuant to the terms of a Management and Support Services Agreement dated April 15, 2008. KEI expects to enter into a similar agreement with KEC in due course.

2. **Project Description**

The Chatham Project will comprise the following components:

- (a) 44 Siemens WTG wind turbines with a nameplate capacity of 2.3 MW each, for a total generating capacity of 101.2 MW;
- (b) a network of 34.5 kilovolt ("**kV**") collector lines, located on leased, municipal right-of-way and easement lands, connecting the 44 turbines to a new transformer substation;
- (c) a new transformer substation comprising a main power transformer, a circuit breaker capacitors, switches, revenue metering protection, control, and the necessary supports, including a "dead-end tower," to step up voltage from 34.5 kV to 230 kV; the transformer substation itself is located on leased land; and
- (d) a new 230 kV connecting line ("**Chatham Connection Line**"), approximately 10 metres in length, located on leased land and extending from the new transformer substation to a point of connection with the existing transmission line ("**Port Alma Transmission Line**") that connects the Port Alma Project to the IESO-controlled grid.

The Port Alma Transmission Line was constructed pursuant to a Decision and Order of the Board in Board File No. EB-2007-0006 (May 29, 2007) granting leave to construct. The point of interconnection between the Port Alma Transmission Line and the proposed Chatham Connection Line will be approximately 3.8 kilometers downstream from the Port Alma

transformer substation. The Port Alma Transmission Line will not require modification to accommodate electricity generated by the Chatham Project.

3. Exemption from the Requirement for a Transmission Licence vis-à-vis the Chatham Connection Line

KEI understands that KEC and KEI as the owner and the operator, respectively, of the Chatham Connection Line would be exempt from the requirement for a transmission licence under clause 57(b) of the OEB Act by virtue of sub-clause 4.0.2(1)(d)(i) of Ontario Regulation ("**O. Reg. 161/99**"). This sub-clause specifies that no transmission licence is required where the transmitter is also a generator and transmits electricity only for purposes of conveying it into the IESO-controlled grid. KEC and KEI rely on this exemption because:

- (a) KEC and KEI will be "generators" within the meaning of section 56 of the OEB Act because they will be the owner and the operator, respectively, of the Chatham Project;
- (b) KEC and KEI will be "transmitters" within the meaning of section 56 of the OEB Act because they will be the owner and the operator, respectively, of the Chatham Connection Line ; and
- (c) KEC and KEI as the owner and the operator, respectively, of the Chatham Project and the Chatham Connection Line, will transmit electricity on such line for the sole purpose of conveying it into the IESO-controlled grid via the Port Alma Transmission Line.

In the result, both KEC and KEI will be "generators" and "transmitters" and will transmit electricity on the Chatham Connection Line for the sole purpose of conveying it into the IESO-controlled grid, all within the meaning of sub-clause 4.02(1)(d)(i) of O. Reg. 161/99.

4. Exemption from the Requirement for a Transmission Licence vis-à-vis the Port Alma Transmission Line

KEI understands that both KEP A and KEI as the owner and the operator, respectively, of the Port Alma Transmission Line are currently exempt from the requirement for a transmission licence under clause 57(b) of the OEB Act by virtue of sub-clause 4.0.2(1)(d)(i) of O. Reg. 161/99. KEI also understands that KEP A and KEI would continue to be exempt from the requirement for a transmission licence in relation to the use of the Port Alma Transmission Line to transmit electricity generated by the Chatham Project, also by virtue of sub-clause 4.0.2(1)(d)(i).

Sub-clause 4.0.2(1)(d)(i) specifies that no transmission licence is required where the transmitter is a generator and transmits electricity only for purposes of conveying it into the IESO-controlled grid at a price no greater than that required to recover all reasonable costs. KEP A and KEI rely on this exemption in respect of the proposal to convey electricity, generated by the Chatham Project, over the Port Alma Transmission Line and into the IESO-controlled because:

- (a) KEP A and KEI are "generators" within the meaning of section 56 of the OEB Act because they are the owner and operator, respectively, of the Port Alma Project;

- (b) KEPA and KEI are "transmitters" within the meaning of section 56 of the OEB Act (albeit exempt from the requirement to be licensed as such) because they are the owner and the operator, respectively, of the Port Alma Transmission Line;
- (c) KEI, as the operator of the Chatham Project and both the Chatham Connection Line and the Port Alma Transmission Line, will transmit electricity generated by the Chatham Project over both lines for the sole purpose of conveying such electricity into the IESO-controlled grid; and
- (d) the actual operation and maintenance costs of the Port Alma Transmission Line will be allocated between KEPA and KEC on the basis of cost causation.

In the result, KEPA and KEI will be both "generators" and "transmitters" and will transmit Chatham Project electricity on the Port Alma Transmission Line for the sole purpose of conveying it into the IESO-controlled grid, all within the meaning of sub-clause 4.02(1)(d)(i) of O. Reg. 161/99.

5. KEI Requires a Generation Licence

Clause 57(c) of the OEB Act stipulates that no person may generate electricity for sale through the IESO-administered markets without a licence. Section 56 of the OEB defines a "generator" as "person who owns or operates a generation facility". From this, it follows that where the owner of a generation facility is not also the operator of the facility, both entities are required to be licensed under clause 57(c) of the OEB Act.

KEPA, as the owner of the Port Alma Project, holds Generation Licence EG-2008-0027. KEI is not currently licensed as a generator *qua* operator but will be filing an application for a generation licence shortly.

6. Why a Board Determination is Required

On its face, sub-clause 4.0.2(1)(d)(i) of O.Reg. 161/99 exempts, from the requirement of clause 57(b) of the OEB Act, any generator of electricity who transmits electricity, at cost, for the purpose of conveying it into the IESO-controlled grid. There is, however, uncertainty about the applicable scope of this provision; specifically, whether it would include generators who convey, at cost, electricity generated by a third party.

Discussions with potential lenders for non-recourse financing of the Chatham Project are now underway. Questions regarding the regulatory requirements pertaining to the project have been raised; in particular, questions have arisen as to whether sub-clause 4.02 (i)(d)(i) should be "read-down" and, if so, how narrowly it should be construed. It is not possible to respond to such questions with certainty or confidence.

An "obvious" solution would be to simply have KEPA and KEI apply for a transmission licence under clause 57(b) of the OEB Act in relation to the use of the KEPA Transmission Line to convey electricity generated by the Chatham Project. This is not, however, an option that is available to the parties. The Port Alma Project has been financed on a non-recourse basis and any change in the risk profile of the project (including the assumption of additional regulatory

obligations) would require the consent of all project lenders (receipt of which is highly unlikely) and the renegotiation of certain aspects of the financing.

Another solution to the "exemption dilemma" would be for KEC to construct its own transmission connection to the IESO-controlled grid. This is not a desirable option, either, because utilizing spare capacity on the Port Alma Transmission Line, thereby avoiding the societal costs of constructing a dedicated transmission line, was a key objective underpinning the design of the Chatham Project. A lesser but still relevant concern is the fact that the price that KEC will receive for electricity generated by the Chatham Project is fixed under the RES Contract. This price was determined on the basis of project economics that assumed the use of the KEPA Transmission Line to connect the Chatham Connection Line with the IESO-controlled grid, thereby avoiding the monetary costs of building a duplicative facility.

None of KEI, KEPA or KEC are in the business of providing transmission services to third parties for commercial gain. Indeed, the constating documents of each would require amendments to permit them to assume the responsibilities and obligation of a licensed transmitter. The fact that special purpose, related entities – KEC and KEPA – were created to hold the assets of the Chatham Project and the Port Alma Project, respectively, is a simple reflection of the way in which these projects are or will be financed. Accordingly, we submit that confirming the availability to these entities, of the exemption created by sub-clause 4.0.2(1)(d)(i) of O. Reg. 161/99, would not offend the underlying intent of the licensing scheme established by the OEB Act and the exemption provision in sub-clause 4.0.2(1)(d)(i) of O. Reg. 161/99.

7. Conclusion

We would be grateful to receive confirmation from the Board that based on the facts and circumstances set out herein:

- (i) KEC and KEI would be exempt from the requirement for a transmission licence under clause 57(b) of the OEB Act in respect of the Chatham Connection Line, by virtue of sub-clause 4.0.2(1)(d)(i) of O. Reg. 161/99; and
- (ii) KEPA and KEI would be exempt from the requirement for a transmission licence under clause 57(b) of the OEB Act in respect of their use of the Port Alma Transmission Line to convey electricity generated by the Chatham Project, by virtue of sub-clause 4.02(1)(d)(i) of O. Reg. 161/99.

There is some urgency associated with KEI's request. As mentioned above, discussions with potential lenders to the Chatham Project are currently underway. An inability to confirm the regulatory status of the project could materially and adversely affect these endeavours.

Yours very truly,



HTN/ko

cc: Mr. Howard Wetston
Chair
Ontario Energy Board

Ms. Mary Anne Aldred
General Counsel
Ontario Energy Board

Mr. Mark Garner
Managing Director of Regulatory Policy & Compliance
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BY E-MAIL

December 4, 2009

Ms. Helen Newland
Fraser Milner Casgrain LLP
1 First Canadian Place
100 King Street West
Toronto, Ontario
M5X 1B2

Dear Ms Newland,

I am writing in response to your letter of October 20, 2009 to the Ontario Energy Board. I apologize for the length of time it has taken for me to respond. Your letter stated that:

- KEI
 - Is the operator of the Port Alma Wind Farm
 - Is the operator of the Port Alma Transmission Line
 - will be the operator of the Chatham Project (a 101.2 MW wind farm)
 - will be the operator of the Chatham Connection Line
 - does not currently have an Ontario Energy Board licence
- KEPA
 - owns the Port Alma Wind Farm and has an OEB licence
 - owns the Port Alma Transmission Line and does not have or require an OEB licence as per section 57 of the Ontario Energy Board Act by virtue of the exemption of O. Reg. 160/99 sub-clause 4.0.2(1)(d)(i)
- KEC
 - will be the owner of the Chatham Project
 - will be the owner of the Chatham Connection Line

In your letter you seek confirmation from the Board that KEC and KEI would be exempt from the requirement for a transmission licence in respect of the Chatham Connection Line. You also seek confirmation that KEPA and KEI would be exempt from the requirement for a transmission licence in respect of their use of the Port Alma Transmission Line to convey electricity generated by the Chatham Project.

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Board records show that on March 7, 2008 the Board issued a Letter of No Review to KEPA with respect to the Port Alma Wind Farm.

After conferring with other Board staff on the above issues and based on the information provided in your letter, I would recommend that:

- o KEI will need to obtain a generation licence from the Board if it is the operator of the Port Alma Wind Farm and KEPA will need to amend its licence to be only the owner
- o KEI will need to amend this licence to include the Chatham Project when these facilities become operational and if KEI becomes the operator of them
- o KEI will not require a transmission licence to operate the Port Alma Transmission Line by virtue of O. Reg. 161/99 sub-clause 4.0.2(1)(d)(i)
- o Assuming KEI will have a generators licence KEI will have to submit a notice under section 81 of the OEB Act to be able to operate the Port Alma Transmission Line and the Chatham Connection Line

Please be mindful that these are my recommendations and not the opinion of the Ontario Energy Board and do not bind the Board in any way. All applications before the OEB will be considered by the decision maker(s) and they will render their decision accordingly.

Sincerely,

Original signed by

Adrian Pye
Manager,
Licence Applications