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ONTARIO ENERGY BOARD

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



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March 4, 2008

Via 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* (the "OEB Act") as submitted by Kruger Energy Inc. ("KEI")  
Board File Number EB-2007-0691**

On February 25, 2008 KEI filed a System Impact Assessment Application (the "SIA Application") with respect to a 100 MVA substation (the "Project") which is the subject of the above-stated Notice of Proposal. The IESO raised a concern with respect to the intent of the filing of the SIA Application as it relates to the section 81 Notice of Proposal.

KEI writes this letter in order to clarify any confusion with respect to the SIA Application. KEI's understanding is that the Board is of the view that technical aspects of the Project could be clarified by way of the electrical drawings and other materials included with the SIA Application. As KEI has previously indicated, its intention was not to proceed to have the full connection studies completed in advance of the Board's decision in respect of the section 81 Notice of Proposal. It would seem contrary to the efficient use of resources to have the IESO undergo the complete analyses and prepare reports for a proposed project that the Project proponent may not ultimately construct in the absence of the Board's approval under section 81 of the OEB Act.

KEI interprets the test in section 81 of the OEB Act as being narrow in focus. KEI takes the view that the test requires that the Board consider whether the development and maintenance of a competitive market would be adversely affected when considering that the proposed project owner would own both generation and transmission assets. Section 81 is clear that it applies only to a generator or affiliate of a generator acquiring, constructing or purchasing shares in a transmission or distribution system. If the test was not predicated on the proponent owning both generation and transmission (or distribution

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as the case may be), then every proposed transmission or generation project would be subject to a section 81 review and this result is not supported by the legislation.

KEI acknowledges the mandates of the IESO and Hydro One Networks Inc. ("Hydro One") to complete connection studies and to make a determination as to whether the proposed Project meets system requirements and therefore can ultimately be connected. KEI would look forward to working with the IESO and Hydro One in the completion of the studies in the future and in this context has spoken to the IESO regarding its intentions with respect to the SIA and future potential steps in relation thereto. However, KEI's position is that the analyses and reports should not be required to be completed in advance of the Board's consideration of the section 81 Notice of Proposal.

Yours very truly,

**Borden Ladner Gervais LLP**



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, Invenergy Canada (by e-mail only)

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