



EB-2012-0458

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

AND IN THE MATTER OF an application by K2 Wind
Ontario Limited Partnership for an Order granting leave to
construct a new transmission line and associated facilities.

PROCEDURAL ORDER NO. 1
February 19, 2013

K2 Wind Ontario Limited Partnership (“K2 Wind”) filed an application with the Ontario Energy Board (the “Board”), dated December 5, 2012, under sections 92 and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”) for leave to construct approximately 5.1 km of underground single circuit 230 kilovolt (“kV”) electricity transmission line and associated facilities (the “Proposal”). K2 Wind is also seeking an order approving the form of agreements that have been or will be offered to landowners affected by the Proposal. The Board has assigned File No. EB-2012-0458 to this application.

Participation in the Proceeding and Cost Eligibility

The Board has received a request for intervenor status from a group of residents and landowners in the Township of Ashfield Colborne Wawanosh (the “Residents Group”). The Residents Group has stated that its members have an interest in the Proposal in that, among other things, the application involves the construction of the underground transmission line on public roads. The Board has also received a request for intervenor status from the Independent Electricity System Operator (“IESO”).

On February 15, 2013, the Board received a letter from K2 Wind objecting to the intervention of the Residents Group on the basis that in its view neither the Residents Group nor its members have demonstrated that they have a substantial interest in this

proceeding and none of members of the Residents Group live in close proximity to the proposed K2 Wind facilities (i.e. within less than 1 kilometre).

In assessing a party's eligibility for intervenor status, the Board is guided by section 23 of the *Rules of Practice and Procedure*, which provides that "The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross-examining a witness". In its request for intervenor status, the Residents Group states among other things that "We feel that there are significant safety considerations that need to be addressed with such a high voltage underground line on public land near fences, ditches and drains." The Board considers this to be a substantial interest, which is relevant to "the interests of consumers with respect to... the reliability and quality of electrical service", as contemplated by s. 96(2) of the Act.

The Board hereby grants intervenor status to the Residents Group and the IESO. The Board requires the Residents Group to file a letter with the Board designating a single representative for the purpose of this proceeding. This information is to be filed with the Board and delivered to the other parties by February 28, 2013.

The Residents Group has requested eligibility for a cost award. In its letter to the Board of February 15, 2013, K2 Wind objected to this request because in its view the Residents Group does not meet any of the tests for cost eligibility set out in section 3.03 of the Board's *Practice Direction on Cost Awards* (the "Practice Direction"). The Residents Group responded to this objection in its letter to the Board of February 19, 2013. The Board considers that the Residents Group primarily represents a public interest relevant to the Board's mandate and hereby grants cost eligibility to the Residents Group.

The Board notes that any award made by the Board will only be for costs that relate to matters directly within the scope of this proceeding. The scope of the proceeding is described below. Parties should review the Practice Direction for further information about which types of costs are eligible for recovery. For example, costs for counsel and consultants are generally recoverable, but costs for time spent directly by intervenors are generally not recoverable.

The Rules of Practice and Procedure and the Practice Direction and related forms are available on the Board's website at www.ontarioenergyboard.ca.

Scope of the Board's Jurisdiction

The Board reminds parties that the Act expressly limits the scope of the Board's review of the Proposal. Section 96(2) of the Act provides that in considering the public interest concerning the Proposal the Board can only consider "the interests of consumers with respect to prices and the reliability and quality of electricity service" and, "where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources." The Board also has the jurisdiction to approve the form of agreements with affected landowners pursuant to section 97 of the Act.

Environmental issues are not within the scope of the Board's review, but are considered within the Ministry of the Environment ("MOE") Renewable Energy Approval ("REA") process. Although the Board has no role in the REA process, any approval of this application would ordinarily be conditional on all necessary permits and authorizations being received, including an approved REA.

Issues relating to land-use, land valuation, construction activities, and health and aesthetics are also not within the scope of the Board's jurisdiction.

As indicated above, if parties pursue issues which are beyond the scope of this proceeding, the associated costs will not be eligible for any cost award.

Procedural Steps

In the Notice issued January 15, 2015, the Board indicated that it intended to proceed by way of a written hearing rather than an oral hearing unless any party satisfied the Board that there was a good reason not to do so. No party communicated an objection to a written hearing within the required timeframe. The Board hereby confirms that it will proceed by way of written hearing.

THE BOARD ORDERS THAT:

1. The Residents Group shall, no later than **February 28, 2013** file with the Board and deliver to all parties a letter confirming who is acting as a representative of the Residents Group for the purpose of this proceeding.
2. Board staff seeking information from K2 Wind relevant to this proceeding that is in addition to the evidence already filed with the Board shall request it by written interrogatories filed with the Board and delivered to K2 Wind and all intervenors on or before **February 28, 2013**.
3. Intervenors seeking information from K2 Wind that is relevant to this proceeding and that is in addition to the evidence already filed with the Board shall request it by written interrogatories filed with the Board and delivered to K2 Wind, all intervenors, and Board staff on or before **March 4, 2013**. Where possible, the questions should specifically reference the evidence already filed.
4. K2 Wind shall, no later than **March 14, 2013** file with the Board and deliver to all intervenors and Board staff a complete response to each of the interrogatories.
5. Intervenors and Board staff shall file any evidence on which they plan to rely on or before **March 18, 2013**.
6. Parties seeking information on the evidence filed by Board staff and/or intervenors shall request it by written interrogatories filed with the Board and delivered to K2 Wind, Board staff and all intervenors on or before **March 25, 2013**.
7. Parties shall, no later than **April 1, 2013** file with the Board and deliver to all intervenors and Board staff a complete response to each of the interrogatories referred to in item 6.
8. If an intervenor or Board staff wishes to make a submission arguing its position, the intervenor or Board staff must file this submission with the Board, and deliver it to all other parties, by **April 10, 2013**.

9. If K2 Wind wishes to respond to any submission, the written response must be filed with the Board and delivered to all parties by **April 17, 2013**.

All filings to the Board must quote file number EB-2012-0458, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca.

If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, February 19, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX 'A'

TO

PROCEDURAL ORDER NO. 1

Applicant and List of Intervenors

Board File No: EB-2012-0458

February 19, 2013

Rep. and Address for Service

APPLICANT

**K2 Wind Ontario Limited
Partnership**

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INTERVENORS

Residents Group

Rep. Name and Address
To be Filed

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