**VIA ELECTRONIC FILING & REGULAR POST**

April 22, 2013

Ontario Energy Board

P.O. Box 2319

2300 Yonge Street, 27th Floor

Toronto, ON

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Attention: Ms. Kirsten Walli,

 Board Secretary\_

Dear Ms. Walli:

**RE: Board File Number: EB-2012-0458**

 **K2 Wind Ontario Limited Partnership;**

 **Application for Leave to Construct (the “Application”)**

Pursuant to Board Order No. 3 of Procedural Order No. 4, dated April 5, 2013, the Residents Group would like to make the following reply submission:

Throughout these proceedings K2 Wind has consistently taken the position that this is a project thatis in a preliminary stage and details therefore do not need to be provided. They have put forward the argument that details are not required at this stage of the proceedings and that**,** in any event, provision of such detailed information falls outside the Board’s mandate.

In response to that contention, the Residents Group submits the position that the scope of the Board’s mandate is not limited in terms of the information which they may seek to consult in reaching a decision in any given case. This is particularly true when the matter before the Board is for a project of such magnitude that the safety and reliability of the services to the public is a primary factor. Chapter 4 of the OEB filing requirements for Electricity Transmission and Distribution Applications specifically notes that the discretion of the Board is not limited in terms of information and evidence that it may wish to see.

The Residents Group also submits that the substantive nature of the K2 Wind proposed facilities elevates the project in terms of the rigor with which it must be assessed. The OEB website defines the following terms:

*Generators: Generators produce the electricity that we use. Generation is the first step in the process to provide electricity to consumers.*

*Transmitters: Once generated, electricity travels across Ontario from generating plants over high-voltage transmission lines to local transformers that then reduce the voltage level, making it suitable for local distribution.*

*Utilities (Distributors): After traveling over the high-voltage transmission lines and through transformers, electricity then travels over low-voltage distribution lines, which are owned by local utilities, to homes and offices.[[1]](#footnote-1)*

K2 Wind, in response to the Board staff interrogatories, has indicated that it is planning to apply for a generation license. However, we note that the distinctions between generators, distributors and transmitters are not mutually exclusive as considered by the Board. In the case EB-2010-0253, the OEB determined the following:

*The Board disagrees with Grey Highlands’ submission that the defined terms “distribution system”, “generation facility”, “renewable energy generation facility” and “transmission system” are all mutually exclusive since there is nothing in the applicable legislation that would support such an interpretation.[[2]](#footnote-2)*

This interpretation was subsequently upheld in EB-2011-0053 when the Board ruled:

*The Board finds, as did the panel in the original Decision, that there is nothing in the applicable legislation and regulation that would support such a restrictive, mutually exclusive interpretation of the definitions in the Electricity Act or indicate that a “strict construction” of section 41 of that Act is proper, or would yield the interpretation Grey Highlands argues for in its Notice of Motion. [[3]](#footnote-3)*

The Residents Group notes that throughout the application process K2 Wind has referred consistently to this application as a transmission project. The matter before the Board is described as a “Matter of an Application (the “Application”) by K2 Wind Ontario Limited Partnership (“K2 Wind”) for an order under section 92 and subsection 96(1) of the OEB Act granting leave to construct an electricity transmission line and related transmission facilities (the “Proposed Facilities”).”

A review of the Board staff interrogatories would indicate that there is a definite concern regarding the scale and scope of the Proposed Facilities and the abilities of the applicants to develop and manage them. For example, Board staff posed the following questions to K2 Wind:

*Interrogatory 2: Connecting Other Generation*

*ii. As a privately owned transmission line, does K2 Wind see the possibility of accommodating additional connections?*

*iv. Does K2 Wind intend to apply for a transmission license?*

*Interrogatory 4: General Organizational Capability*

*i. What is the Applicant’s experience in constructing and operating a transmission infrastructure in Ontario or in other jurisdictions in Canada?*

*ii. Please indicate what corporate organizational capabilities exist to complete the applied for transmission facilities; Where applicable, please provide information on:*

* *Project Management*
* *Design and Construction*
* *Operation and Maintenance; and*
* *Examples of similar projects that have been undertaken.*

These are questions which echo the guidelines for transmission projects set out in Document G-2010-0059. These requirements are mandated by the Board for transmitters seeking designation to develop a transmission project in Ontario that has been identified by the OPA as required for connection of renewable generation sources.[[4]](#footnote-4) While K2 Wind has indicated that it is not seeking a transmitting license, the project certainly has the elements of a transmission system.

In their response to the Board staff interrogatories, K2 Wind filed a copy of its Power Purchase Agreement (PPA) with the Ontario Power Authority (OPA). Section 2.1 of the PPA – Article 2 Development and Operation of the Facility reads as follows regarding the Supplier (K2 Wind):

*The Supplier shall design and build the Contract Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Transmission System Code, the Connection Agreement, in each case as applicable, and all other Laws and Regulations. The Supplier shall ensure that the Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement.[[5]](#footnote-5)*

The standards which are referred to in section 2.1 are defined as follows:

*Good Engineering and Operating Practices means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity as the Contract Facility or any of the practices, foresight and reasonable judgement by a prudent generator of Electricity in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry.[[6]](#footnote-6)*

The Residents Group respectfully submits the Application before the Board ought to be more properly considered as having the characteristics of a transmission project and thereby held to a higher standard of review than that proposed by K2 Wind. Clearly the PPA signed by the Applicant envisions an extremely high standard of design that is consistent with existing applicable utility standards in regards to safety and reliability. In that regard, it is well within the mandate of the Board to have regard to information that speaks to the applicant’s abilities and design capabilities.

The Residents Group is particularly concerned that the level of completeness of the design of the underground 230 KV transmission line appears to have changed during the course of this Hearing. In the evidence filed with the Board by K2 Wind on December 20, 2012, the line is stamped as being preliminary. However, in K2 Wind’s response to the Board Interrogatory 5 i., the preliminary design is elevated into a final design. K2 Wind states quite clearly that their design team “has assessed applicable codes and standards, as well as the site specific conditions and created a final design based on these constraints**”.[[7]](#footnote-7)**

However, in response to the Residents Group interrogatories, the final design again reverted to being only a preliminary design because it was “not intended to mean that K2 Wind had finalized every aspect of each road crossing, grounding grid, etc.” and “final design details will only be available once an EPC contractor has been retained and all permitting processes have been completed”.[[8]](#footnote-8) The Residents Group submits that there is a substantial discrepancy between the two statements and in the way in which the design of the proposed 230 KV line is being portrayed. The role of a contractor is generally to build a facility as it has been designed, making allowances for changes which may need to be made as a result of unexpected problems encountered on site. When one is applying for approval, it is expected that the fundamental design parameters for a project will already have been determined at that point.

At what pointcan residents of the Township expect to have questions regarding safety and reliability issues addressed if the design changes from preliminary to final to preliminary? This is the only point in the process where these concerns can be addressed as there is no opportunity for public input beyond this point. The REA process will deal with noise, environmental and related issues but will not look at the safety and reliability issues associated with an underground 230 KV transmission line.

In their response to the Residents Group, K2 Wind has stated that the identity and qualifications of the engineers who designed the 230 underground KV line are irrelevant and that discussions with other wind project developers are also not relevant to the matters at issue in this proceeding. It is concerning when an applicant for a project is not forthcoming in identifying who designed the project and what their qualifications are. It is particularly worrisome with a projectof the magnitude of that being proposed by K2 Wind, with its implications for safety and thus reliability and quality of electricity service.

With regard to other projects in the area (BoardInterrogatory #24), the Residents Group notes that Board staff also asked about K2 Wind’s knowledge of other proposals for wind development in this area. The Residents Group is in agreement with Board staff on the relevancy of this question. It should be noted that, in addition to the two EDP projects listed in the FIT CAR PRIORITY RANKING by Region for the ACW area, an additional potential project is identified in the Stakeholder Comments, filed December 5, 2012 as Exhibit 1, Tab 3, Schedule 1. On pages 3-4 of 71 the K2 Wind correspondence summary of a public meeting held on April 21, 2010 states as follows:

* Meeting attendees are interested in developing their own renewable project and expressed interest in tying into the grid where the K2 Wind Project currently proposes to connect.

The K2 Wind Response is outlined as follows:

* Project Team members stated they are open to suggestions about how this may work and the Project Team would be willing to discuss this in further detail if the meeting attendees desire. Project Team recommended they contact the Renewable Energy Facilitation Office (REFO) for assistance.

The K2 Wind response to our questions on how complaints will be dealt with in the future should any arise (Interrogatory #6), and whether or not residents feel their concerns have been addressed (Interrogatory #35), is that these issues are irrelevant. Board staff also directed questions to K2 Wind regarding public concerns relating to safety issues and how K2 Wind would alleviate such concerns. The Residents Group reiterates that Board staff would not have asked such questions if they deemed them irrelevant. It is the position of the Residents Group that the concerns of residents with regard to safety, reliability and potential future problems must be taken very seriously and are certainly not irrelevant to the proceeding. K2 Wind’s response in this regard is troubling.

Respectfully,

*Original Signed By*

Anita L. Frayne

On Behalf of the Residents Group

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1. OEB, 2013, http://www.ontarioenergyboard.ca/OEB/Consumers [↑](#footnote-ref-1)
2. EB-2010-0253, Decision and Order dated Jan 12, 2011, Paragraph 40, Pg 9 [↑](#footnote-ref-2)
3. EB-2011-0053, Decision and Order on Motion to Review dated April 21, 2011, Pg 6 [↑](#footnote-ref-3)
4. OEB, Document G-2010-0059, Filing Requirements: Transmission Project Development Plans, Aug. 26, 2010, pg. 3 [↑](#footnote-ref-4)
5. EB-2012-0458, K2 Wind Response to Interrogatories of Board Staff, Appendix 1, Section 2.1 of PPA, pg 5, filed March 14, 2013, [↑](#footnote-ref-5)
6. EB-2012-0458, K2 Wind Response to Interrogatories of Board Staff - Appendix 1, Section 68 of Appendix 2 pg 7 to PPA, filed March 14, 2013 [↑](#footnote-ref-6)
7. EB-2012-0458, K2 Wind Response to Interrogatories of Board Staff, Filed March 14, 2013, pg 18 [↑](#footnote-ref-7)
8. EB-2012-0458, K2 Wind Response, Letter dated April 15, 2013. [↑](#footnote-ref-8)