



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.

**DECISION ON MOTIONS AND
PROCEDURAL ORDER NO. 5
June 14, 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* (the "Act"). K2 Wind has applied for an order of the Board for leave to construct approximately 5.1 km of underground single circuit 230 kilovolt ("kV") electricity transmission line and associated facilities (the "Proposal"), and for an order approving the form of agreements that have been or will be offered to landowners affected by the Proposal.

In the Notice of Application, the Board outlined the scope of the proceeding for applications that are filed under section 92 of the Act, indicating that section 96 of the Act states that the Board shall consider the public interest and shall only consider the following two issues when deciding if the proposed project is in the public interest:

- (1) The interests of consumers with respect to prices and the reliability and quality of electricity service; and
- (2) 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 noted that environmental issues with respect to this project are considered through a separate process which is not a part of this Board proceeding.

In Procedural Order No. 1, the Board reminded the parties that environmental issues are not within the scope of the Board's review as they are considered within the Ministry of the Environment Renewal Energy Approval ("REA") process. The Board also reminded parties that any approval of the application would ordinarily be conditional on all necessary permits and authorizations being received, including an approved REA. The Board also noted that the Board has the jurisdiction to approve the form of agreements with affected landowners pursuant to section 97 of the Act.

BACKGROUND TO THE MOTIONS

On March 23, 2013, an intervenor group of area residents (the "Residents Group") filed a letter requesting that the Board order K2 Wind to answer more fully a number of the interrogatories they submitted on March 4, 2013. In Procedural Order No. 3, the Board accepted this letter as a motion ("**Motion for IR Responses**").

On March 24, 2013, the Residents Group filed evidence with the Board consisting of three affidavits: an affidavit of Michael Leitch ("Leitch Affidavit"), an affidavit of Ross and Darlene Brindley ("Brindley Affidavit"), and an affidavit of Marianne and Paul Bollinger ("Bollinger Affidavit").

On April 1, 2013, K2 Wind filed a Notice of Motion seeking an Order of the Board striking out the three affidavits filed on behalf of the Residents Group ("**Motion to Strike**").

By way of Procedural Orders 3 and 4, the Board determined that it would hear both motions in writing and set out a schedule for the parties to file submissions on the motions. Both K2 Wind and the Residents Group filed submissions with respect to both motions.

MOTION FOR IR RESPONSES

As set out above, on March 23, 2013 the Residents Group filed a letter requesting that the Board order K2 Wind to further responses to interrogatories 1, 2, 4-7, 11, 12, 15, 18, 24, 26, 28 and 35 which were submitted on March 4, 2013. The interrogatories which are the subject of this Motion for IR Responses are attached as appendix A to this Decision and Procedural Order.

Board FindingsInterrogatories 4, 15 and 28

K2 Wind has provided clarification of its responses to these interrogatories. The Board does not require K2 Wind to provide any further response.

Interrogatory 2

The Board requires K2 Wind to clarify what it means by “final design”.

Interrogatories 1, 5-7, 11, 12, 18, and 26

The Board’s review of the Proposal under section 92 of the Act does not include an in depth assessment of the engineering team, or of the project design as K2 Wind moves its transmission project through the various engineering and project management phases. That said, when the Board approves an application in this type of proceeding, its approval is subject to a set of conditions concerning compliance with applicable standards.

The Board therefore does not order K2 Wind to provide any further information in response to these interrogatories.

Interrogatories 24 and 35

These interrogatories request further information on communication issues that the Board does not require in order to make its decision. Therefore the Board does not order K2 Wind to make any further response.

MOTION TO STRIKE

As set out above, K2 Wind has filed a Motion to Strike concerning the Leitch Affidavit, Brindley Affidavit and Bollinger Affidavit.

The Leitch Affidavit essentially raised concerns that the project is inadequately designed to meet current standards and poses safety concerns. The Brindley Affidavit provided evidence related to stray voltage effects induced by overhead 27 kV distribution lines. The Bollinger Affidavit set out views expressed during an Ashfield-Colborne-Wawanosh (“ACW”) Township Council meeting concerning the content of a K2 Wind letter that was sent to various residents in the ACW Township.

The Board will generally not exclude evidence at this stage unless it is absolutely clear that the evidence is not relevant.

The Leitch Affidavit

The Residents Group submitted that the content of the Leitch Affidavit relates to the Residents Group’s interest in public safety, which involves reliability and quality of service, and accordingly that the affidavit is relevant and within the Board’s jurisdiction under section 96(2) of the Act. Further, the Residents Group submitted that the affidavit addresses the design parameters of the proposed transmission line and that, given Mr. Leitch’s extensive experience with respect to the design and construction of high voltage lines, he is a qualified expert in matters discussed within the affidavit.

In K2 Wind’s submission, Mr. Leitch has not demonstrated that he is an expert. In addition, K2 Wind submitted that the issues raised in the Leitch Affidavit are outside the scope of the proceeding, and would require the Board to engage in matters of electrical safety and construction standards which are within the exclusive jurisdiction of the Electrical Safety Authority (“ESA”).

Board Findings

The Board notes the usefulness of the Leitch affidavit in that it provides the Board with a very clear understanding with respect to both the general nature and the specifics of the Residents Group’s safety related concerns.

The Board further notes that with respect to its interest in safety as it may relate to reliability and quality of service, the Board has historically imposed, as a condition of the granting of the Board’s approval, the requirement to comply with all Electrical Safety Authority requirements. This condition imposed by the Board complements the ESA’s mandate on electrical safety and is included by the Board when the Board approval is

granted in recognition of the importance of the types of issues raised in the Leitch Affidavit.

The Board has determined that the Leitch Affidavit has been informative and provided the Board the opportunity to place the concerns of the Residents Group into the appropriate context in relation to the Board's jurisdiction. For this reason the Board denies K2 Wind's motion to strike the Leitch Affidavit.

Given the manner in which the Board has been assisted by the Leitch Affidavit, the Board does not consider it necessary to rule on Mr. Leitch's acceptability as an expert witness. However, the Board notes that without being qualified as an expert, Mr. Leitch can provide evidence concerning his personal experience, although he cannot provide expert opinion evidence.

The Brindley Affidavit

The Brindley Affidavit provided evidence that relates to stray voltage effects induced by overhead 27 kV distribution lines, including health effects on farm animals. Although the Proposal involves a 230 kV underground transmission line, which is significantly different, the Residents Group submitted that in fairness the wind project referred to in the Brindley Affidavit should be considered because K2 Wind referred to that project to illustrate its experience. K2 Wind submitted that the issue raised in the Brindley Affidavit concerns alleged stray voltage from a 27 kV distribution line of Hydro One Networks Inc. that has nothing to do with the Proposal. Further, K2 Wind submitted that the health issues that are raised in the Brindley Affidavit are outside the scope of this proceeding.

Board Findings

As indicated in the Board's Notice of Application and in Procedural Order No. 1, the Board's jurisdiction under the Act in this type of application is strictly limited. The type of issues relating to health effects from potential stray voltage are not within the Board's jurisdiction. However, as indicated above, the Board's approval of this type of application is normally conditional on approval of relevant regulatory requirements.

The Board grants K2 Wind's motion to strike the Brindley Affidavit from the record.

The Bollinger Affidavit

The Bollinger Affidavit sets out views expressed during an ACW Township Council meeting concerning the content of a K2 Wind letter that was sent to various residents in the ACW Township.

K2 Wind submitted that the ACW Council is not an intervenor in this proceeding. Further, K2 Wind submitted that the Bollinger Affidavit concerns a letter with content that is not within the scope of this proceeding.

Board Findings

The Board finds that the information contained in the Bollinger Affidavit is not relevant to this proceeding. Although it concerns communications relating to the Proposal, it does not address the substance of the issues that the Board is required by the Act to consider. The Board therefore grants K2 Wind's motion to strike the Bollinger Affidavit from the record.

However, the Board notes that the ACW Township, although not an intervenor, has filed letters of comment which will be duly considered in this proceeding in accordance with normal Board practice.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. The Brindley and Bollinger affidavits shall be struck from the record.
2. K2 Wind shall complete its response to the Residents Group interrogatory 2 and file its response and copy all parties on or before **June 20, 2013**
3. K2 Wind shall file its argument-in-chief with the Board and copy all parties on or before **June 27, 2013**.
4. Intervenors and Board staff shall file any submissions, with the Board, and copy all parties, on or before **July 5, 2013**.

5. K2 Wind shall file its reply submission with the Board and copy all parties on or before **July 15, 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, June 14, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX 'A'

TO

DECISION ON MOTIONS AND PROCEDURAL ORDER NO. 5

RESIDENTS GROUP INTERROGATORIES CITED IN LETTER OF MARCH 23, 2013

Board File No: EB-2012-0458

June 14, 2013

Proposed Underground 230 KV Transmission Line

Reference:

- a) Exh. E/ Tab 1/ Sch.1/ pg 1 & 2/ Facilities Overview
- b) Exh. E/ Tab 2/ Sch.2/ pg 2 & 3/ major Transmission Equipment Ratings
- c) Exh. E/ Tab 6/ Sch.1/ Table of Applicable Codes, Standards and Regulations
- d) Exh. D/ Tab 2/ Sch.1/ Location of Proposed Facilities

1. Provide any additional and complete construction/engineering details of the proposed 230 KV line including: specifications for cables, protection, depth of construction, and materials used surrounding the cables. Provide the source for the proposed cables. Provide the details of the proposed contractors who will construct the underground line, including their background and specific experience in installing a 230 KV underground line. Indicate if their related experience pertains to an urban or rural environment.

Provide the names of any engineers who were involved in the design of the proposed 230 KV transmission line and provide their full C.V.s with details of their experience in working on and designing 230 KV underground lines. Indicate if their related experience pertains to an urban or rural environment.

Provide the minutes or notes from any discussions or meetings held with design engineers regarding the proposed underground transmission line.

2. Provide a schematic cross-section of each of the proposed river and road crossings of the underground 230 KV line. Indicate the exact depth of each crossing.

4. Provide copies of all applicable Ontario codes, standards and regulations specifically relating to an underground 230 KV transmission line. Indicate who will be responsible at the ESA for reviewing this high voltage installation.

5. Provide details of any fail safe/safety/backup system in the event of a failure in the transmission line.

6. Provide details of any measures that will be taken to prevent electrification of the surrounding lands in the event of a failure in the transmission line.

In the event of voltage issues/complaints associated with the K2 Wind transmission system, provide details of procedures for resolving these issues. Indicate which staff members will be responsible for resolving these issues. If outside contractors will be required, indicate which contractors will be retained.

7. Provide a copy of the K2 Wind emergency response plan for dealing with a failure in the transmission line. Provide details of the OPP and other emergency responders protocols for responding to an emergency situation involving the proposed transmission line, substation and transformer station.

11. Provide detailed information on how the municipal drains will be handled during construction of the proposed underground 230 KV line.

12. Provide detailed plans for procedures on dealing with ongoing municipal drainage work that may be needed on the municipal drains crossing the underground 230 KV transmission line.

15. How far will the underground 230 KV transmission line be located from private fence lines? Provide information on any existing fence lines intersecting the route of the proposed underground 230 KV transmission line and indicate how these will be dealt with during and after construction of the line.

18. Provide the co-ordinates for all splices in the proposed 230 KV line.

Project Overview

24. Please indicate whether K2 Wind or its affiliates has any connection to or has entertained any discussions with other proposed wind projects in the Township of Ashfield-Colborne-Wawanosh, including but not limited to EDP Resources.

System Impact Assessment (SIA) & Customer Impact Assessment (CIA)

Reference:

- a) Exh. G/ Tab 1/ Sch.1
- b) Exh. G/ Tab 2, 3 & 4/ Schs. 1 - SIA Report, CIA Report & SIA Report Addendum
- c) Exh. G/ Tab 6/ Sch.1
- d) Exh. G/ Tab 7/ Sch. 1

26. The output from the proposed wind project will be connected to a 500 KV Transmission line operated by Hydro One Networks. Provide the description, rules and regulations in regards to the 1988 registered easement for this 500 KV Transmission line. What were the maximum parameters of the 500 KV Transmission line as per the 1988 easement? Will the K2 project's connection change the parameters of the 1988 easement?

What is the available ground fault current for the 500 KV Transmission line. Provide a copy of the parameters for ground faults for this line.

What is the size and capacity of the grounding grid at the transformer station and the substation? Is this sized to permit additional future generation?

28. With regard to the proposed switchyard, indicate whether K2 Wind will be assuming the operational costs of this switchyard. Indicate who will be paying for any future upgrades to this switchyard.

Community and Stakeholder Consultation

Reference

- a) Exh. I/ Tab 1/ Sch.1
- b) Exh. I/ Tab 3/ Sch. 1

35. Various ratepayers and residents of ACW and elsewhere in Ontario have expressed concerns related to the impact of the proposed project. Have residents provided written confirmation that K2 Wind's response to these questions has satisfied their concerns? If so, provide a copy of these confirmations and indicate whether or not the correspondents have a material stake in the proposed project.