



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 MOTION TO REVIEW AND VARY
July 3, 2013

K2 Wind Ontario Limited Partnership ("K2 Wind") filed an application with 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. The Board has assigned File No. EB-2012-0458 to this application.

Residents Group Request

The Residents Group wrote to the Board on June 24, 2013 with the stated intent of providing clarification with respect to the purpose of the Brindley Affidavit (as defined in Procedural Order No. 5). Citing rules 4.01 and 11.01 of the Board's Rules of Practice and Procedure (the "Rules"), the Residents Group requested that the Board reconsider its June 14th Decision in Procedural Order No. 5 (the "June 14th Decision") relating to the admissibility of the Brindley Affidavit, and accept certain amendments to the affidavit.

On June 25, 2013, K2 Wind filed a letter in response to the Motion, submitting that it does not satisfy the threshold question under Rule 45.01 because it does not set out any grounds that raise a question as to the correctness of the Board's decision. Accordingly, K2 Wind requested that the Board deny the Motion.

Board Findings

The Board considers the Residents Group letter (the "Motion") to be a motion to review and vary its June 14th Decision, under Rule 45.01 of the Rules.

Under Rule 45.01, the Board may determine with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.

The Board has considered previous decisions in which the principles underlying the threshold question were discussed, namely the Board's Decision on a *Motion to Review Natural Gas Electricity Interface Review Decision* (the "NGEIR Review Decision") and the Divisional Court's decision *Grey Highlands v. Plateau*.¹

In the NGEIR Review Decision, the Board indicated that "the review [sought in a motion to review] is not an opportunity for a party to reargue the case".

In *Grey Highlands v. Plateau*, the Divisional Court agreed with this principle. The court dismissed an appeal of the Board decision in EB-2011-0053 where the Board determined that the motion to review did not meet the threshold question. The Divisional Court stated:

The Board's decision to reject the request for review was reasonable. There was no error of fact identified in the original decision, and the legal issues raised were simply a re-argument of the legal issues raised in the original hearing.²

In its June 14th Decision the Board cited the Residents Group's submission that the wind project referred to in the Brindley Affidavit should be considered because K2 Wind referred to it to illustrate its experience. The Resident Group's letter of June 24, 2013

¹ EB-2006-0322/0388/0340, May 22, 2007 at page 18 and EB-2011-0053, April 21, 2011 ("Grey Highlands Decision"), appeal dismissed by Divisional Court (February 23, 2012)

² *Grey Highlands (Municipality) v. Plateau Wind Inc.* [2012] O.J. No. 847 (Div. Court) ("Grey Highlands v. Plateau") at paragraph 7

requests that the Board reconsider its June 14th decision based on its clarification of the purpose of the Brindley Affidavit as being to "...alert the Board to an issue of stray voltage that had been created by an affiliate of K2 Wind, on whom they are relying on for experience, and to provide evidence that it had never been resolved."

As indicated in the portion of the Board's June 14th Decision quoted above, the June 14th Decision included a consideration of the submission made in the June 24th letter. Accordingly, the Board considers that the granting of the Residents Group's request to reconsider the June 14th Decision, which it has found to be a motion to review and vary, would provide the Residents Group with an opportunity to reargue the issue. Therefore, the Board, in considering the threshold question provided for in Rule 45.01 of the Rules has determined that the matter in the Motion should not be reviewed on its merits, and dismisses the Motion.

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DATED at Toronto, July 3, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary