



**EB-2008-0310**

**NOTICE OF APPLICATION AND HEARING  
TOWN OF ESSEX  
APPLICATION FOR LEAVE TO ACQUIRE SHARES  
OF E.L.K. ENERGY INC.**

The Town of Essex ("Essex") has filed an application with the Ontario Energy Board, received on September 18, 2008, under subsection 86(2) of the *Ontario Energy Board Act, 1998* (the "Act"). The application requests leave of the Board to acquire the remaining shares of E.L.K. Energy Inc. ("ELK"), a licensed electricity distributor. The Board has assigned the application file number EB-2008-0310.

Essex currently holds 38% of the issued and outstanding common shares in ELK. Essex has entered into a Share Purchase Agreement with the other two shareholders of ELK, namely the Town of Kingsville ("Kingsville"), a 38% shareholder, and the Town of Lakeshore ("Lakeshore"), a 24% shareholder, whereby Essex intends to purchase all of the common shares of ELK held by Kingsville and Lakeshore. The share purchase transaction will make Essex the sole shareholder of ELK, i.e. with 100% shareholdings.

Subsection 86(2) of the Act states that:

- "No person, without first obtaining an order from the Board granting leave, shall,
- (a) acquire such number of voting securities of a ...distributor that together with voting securities already held by such person...will in the aggregate exceed 20 percent of the voting securities of the...distributor..."

Essex has submitted that it is not clear that subsection 86(2) of the Act applies to the proposed transaction and that it only applies where a proposed purchaser starts, pre-transaction, with less than 20% of the shares it intends to acquire and ends up, post-transaction, with more than 20%. Essex submits that, since it already owns 38% of the shares of ELK, subsection 86(2) of the Act does not apply to the proposed transaction. Essex has, however, filed this application in the event that the Board determines that this is not the correct interpretation.

The Board has decided to consider whether subsection 86(2) of the Act applies to the proposed transaction as a threshold issue and will invite parties to make submissions on the issue. The Board will issue a Procedural Order setting out the dates for submissions from parties with respect to the application and on whether subsection 86(2) is applicable to the proposed transaction, once the intervenor list is established.

### **How to see Essex's Application**

Copies of the application are available for inspection at the Board's office in Toronto, and at Town of Essex office and may be on its website.

### **How to Participate**

You may participate in this proceeding in one of three ways:

#### **1. Send a Letter with your Comments to the Board**

Your letter with comments will be provided to the Board members deciding the application, and will be part of the public record for the application. Your letter must be received by the Board no later than **30 days** from the publication or service date of this notice. The Board accepts letters of comment by either post or e-mail at the addresses below.

#### **2. Become an Observer**

Observers do not actively participate in the proceeding but monitor the progress of the proceeding by receiving documents issued by the Board. You may request observer status in order to receive documents issued by the Board in this proceeding. If you become an observer, you need to contact the applicant and others in order to receive documents that they file in this proceeding and they may charge you for this. Most documents filed in this application will also be available on the Board's website. Your request for observer status must be made in writing and be received by the Board no later than **10 days** from the publication or service date of this notice. The Board accepts observer request letters by either post or e-mail at the addresses below; however two paper copies are also required. You must also provide a copy of your letter to the applicant.

### 3. Become an Intervenor

You may ask to become an intervenor if you wish to actively participate in the proceeding. Intervenor status is eligible to receive evidence and other material submitted by participants in the hearing. Likewise, intervenors will be expected to send copies of any material they file to all parties to the hearing.

Your request for intervenor status must be made by letter of intervention and be received by the Board no later than **10 days** from the publication or service date of this notice. Your letter of intervention must include a description of how you are, or may be, affected by the outcome of this proceeding; and if you represent a group, a description of the group and its membership. The Board may order costs in this proceeding. You must indicate in your letter of intervention whether you expect to seek costs from the applicant and the grounds for your eligibility for costs. You must provide a copy of your letter of intervention to the applicant.

The Board intends to proceed by way of written hearing unless a party satisfies the Board that there is good reason for holding an oral hearing. If you object to a written hearing in this matter, you must provide written reasons why an oral hearing is necessary. Any objections to a written hearing must be received by the Board and copied to the applicant within 10 days of the publication date of this notice or the date this notice was served.

If you already have a user ID, please submit your intervention request through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca). Additionally, two paper copies are required. If you do not have a user ID, please visit the Board's website under e-filings and fill out a user ID password request. For instructions on how to submit and naming conventions please refer to the RESS Document Guidelines found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca), e-Filing Services. The Board also accepts interventions by e-mail, at the address below, and again, two additional paper copies are required. Those who do not have internet access are required to submit their intervention request on a CD or diskette in PDF format, along with two paper copies.

### **How to Contact Us**

In responding to this Notice, please reference Board file number EB-2008-0310 in the subject line of your e-mail or at the top of your letter. It is also important that you provide your name, postal address and telephone number and, if available, an e-mail

address and fax number. 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.

**Need More Information?**

Further information on how to participate may be obtained by visiting the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) or by calling our Consumer Relations Centre at 1-877-632-2727.

**IMPORTANT**

**IF YOU DO NOT FILE AN OBJECTION TO THE PROCESS AS OUTLINED OR DO NOT REQUEST TO PARTICIPATE IN THIS PROCEEDING IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THIS PROCEEDING.**

**Addresses****The Board:**

Post:  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON  
M4P 1E4  
Attention: Board Secretary

**The Applicant:**

Town of Essex  
33 Talbot Street  
Essex, ON,  
N8M 1A8  
  
Attention: Mr. Wayne Miller  
Chief Administrative Officer

Filings: [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca)  
E-mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)

Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

Tel: 519-776-7336 Ext. 20  
Fax: 519-776-8811

**Counsel for the Applicant:**

Ogilvy Renault LLP  
Suite 3800  
Royal Bank Plaza, South Tower  
200 Bay Street  
P.O. Box 84  
Toronto, ON  
M5J 2Z4

Attention: Mr. Richard King

Tel: 416-216-2311  
Fax: 416-216-3930

**DATED** at Toronto, October 10, 2008  
**ONTARIO ENERGY BOARD**

*Original signed by*

John Pickernell  
Assistant Board Secretary