

ONTARIO ENERGY BOARD

TOWN OF ESSEX

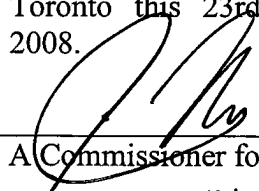
APPLICATION FOR LEAVE TO ACQUIRE SHARES
OF E.L.K. ENERGY INC.

AFFIDAVIT OF PUBLICATION

I, Richard J. King, of the City of Toronto, Province of Ontario, **MAKE OATH AND AFFIRM:**

1. I am a partner of Ogilvy Renault LLP, counsel to the Town of Essex and as such, have personal knowledge of the matters herein deposed.
2. In accordance with the Ontario Energy Board's Letter of Direction dated October 10, 2008, I have arranged for the Notice of Application and Hearing to be published in English in The Windsor Star. Attached hereto as Exhibit "A" is a copy of the Notice published in The Windsor Star on October 18, 2008.

SWORN BEFORE ME at the City of
Toronto this 23rd day of October,
2008.


A Commissioner for Taking Affidavits

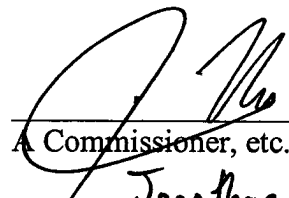
LSUC #49869V
Jonathan Myers


Richard J. King

Exhibit "A"

Notice of Application and Hearing
Town of Essex

This is Exhibit "A" referred to in the
affidavit of Richard J. King sworn
before me this 23rd day of October,
2008.



A Commissioner, etc.

Jonathan Myers
LSUC# 49869V

1320 Condos for Rent

ERSIDE CONDO 2 bdrm
view, \$1150 plus util
pl 3 yrs old, 972-1299

1320 LEGALS

2 Legals

NOTICE TO CREDITORS AND OTHERS

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of Windsor, Ontario,
died December 5,
must send particulars
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Commission de l'énergie
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Ontario

NOTICE OF APPLICATION AND HEARING TOWN OF ESSEX APPLICATION FOR LEAVE TO ACQUIRE SHARES OF ELK 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 ELK Energy Inc. (ELK), a licensed electricity distributor. The Board has assigned the application file number EP-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 end 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; intervenors are 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.omb.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-filing 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.omb.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 EP-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.omb.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, 27th Floor
Toronto, ON
M4P 1E4
Attention: Board Secretary
Filing: www.omb.gov.on.ca
E-mail: Boardsec@omb.gov.on.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

The Applicant:
Town of Essex
33 Talbot Street
Essex, ON
N8M 1A8
Attention: Mr. Wayne Miller,
Chief Administrative Officer
Tel: 519-776-7336 X20
Fax: 519-776-8811

Counsel for the Applicant:
Ogilvy Renault LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
P.O. Box 64
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 Pickemell
Assistant Board Secretary

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