

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, being Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c. 15;

AND IN THE MATTER OF a Notice of Proposal by Kruger Energy Inc. to the Ontario Energy Board under section 81 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15

ARGUMENT-IN-CHIEF OF KRUGER ENERGY INC.

DELIVERED NOVEMBER 10, 2008

A. INTRODUCTION

1. On July 16, 2007 Kruger Energy Inc. (“KEI”) submitted a Notice of Proposal (the “Notice of Proposal”) pursuant to section 81 of the *Ontario Energy Board Act*, 1998 (the “OEB Act”).
2. The Notice of Proposal outlined KEI’s intention to build a 100MVA interconnection substation, (the “Project” or the “Proposed Substation”).
3. The Notice of Proposal outlined that KEI would own generation that would connect to the Proposed Substation.
4. KEI also set out that one of its affiliates owns a 101.2 MW wind farm that is a counter-party to an OPA contract awarded under the RES II RFP. The Kruger Energy Port Alma Wind Farm utilizes different transmission circuits than those proposed by KEI as part of this Notice of Proposal.
5. On September 13, 2007 the Ontario Energy Board (the “OEB” or the “Board”) issued a Notice of Review and advised that it would be reviewing the Notice of Proposal.
6. Section 82 of the OEB Act provides that if the Board has issued a Notice of Review under Section 81, the Board shall make an order approving a proposal described in Section 81 if it determines that;

- (a) the impact of the proposal would not adversely affect the development and maintenance of a competitive market; or
 - (b) the proposal is required to maintain the reliability of the transmission or distribution system of the relevant transmitter or distributor.
7. The OEB Act provides that the Board shall make an order approving the Notice of Proposal if it determines that the impact of the Project would not adversely affect the development and maintenance of a competitive market. This is the issue before the Board.
8. Seven parties intervened in the review. Notices of Intervention were received from the following parties on the dates as outlined below:
- Allus Power Inc. (“Allus Power”) (Initial letter filed September 5, 2007. Further Letter of Intervention filed October 5, 2007.)
 - The Ontario Power Authority (the “OPA”) (October 3, 2007)
 - The Independent Electricity System Operator (the “IESO”) (October 5, 2007)
 - Chatham-Kent Hydro Inc. (“Chatham Kent”) (October 5, 2007)
 - Hydro One Networks Inc. (“Hydro One”) (November 21, 2007)
 - Invenergy Canada (“Invenergy”) (November 21, 2007)
 - The Power Workers’ Union (October 14, 2008)
9. Chatham-Kent submitted interrogatories on November 9, 2007 and the OPA, Allus Power and Board Staff submitted interrogatories on November 12, 2007. KEI filed answers to these interrogatories on November 19, 2007.
10. On November 26, 2007, Hydro One and the IESO filed evidence with the Board.

11. On October 10, 2008, a Technical Conference was held. KEI, the OPA, IESO, Chatham-Kent, Hydro One and Board Staff attended and participated. None of the generation developers who intervened in the proceeding attended the Technical Conference. [October 10, 2008 Technical Conference Transcript, "Appearances" section]

B. SUMMARY OF EVIDENCE AND ISSUES

12. The Notice of Proposal with respect to the Proposed Substation was filed in July 2007. KEI filed the Notice of Proposal in order to address the threshold issue of whether it could proceed to develop transmission/distribution assets at the same time that KEI and its affiliate also owned generation.
13. Throughout the Notice of Proposal proceeding (the "Proceeding"), KEI has been asked to provide specific details with respect to the construction and operation of the Proposed Substation. In response to requests for further detail, specifics related to the Project have been provided where available. Given that construction of the Proposed Substation is in its initial planning stage, pending regulatory approval, some details have not yet been determined. The most recent updated information KEI was able to provide was outlined at the Technical Conference held on October 10, 2008.
14. Procedural Order No. 6, issued September 11, 2008, set out that "the sole issue in this proceeding is whether the impact of the proposal adversely affects the development and maintenance of a competitive market."
15. The Board further outlined that the Technical Conference should therefore focus on the capacity of the 230 kV lines between the Chatham TS and the Lauzon TS and in particular whether the Proposed Substation could limit future access to the 230 kV lines by other persons and impose limits on the IESO's operation of the lines which could restrict other persons. The Board also directed the parties to focus on the future operation of the Proposed Substation including the process to be used for selecting future generation projects for connection to the Proposed Substation and whether the IESO and Hydro One connection processes could be adversely affected.

16. The Board, the IESO and Hydro One submitted questions to KEI that KEI addressed at the Technical Conference. The issues addressed by KEI can be identified in the following main categories:
- (a) The capacity of the 230 kV transmission system in the vicinity of the Chatham TS and the Lauzon TS.
 - (b) Future connections to the Proposed Substation (the Queuing Process).
 - (c) Future operation of the Proposed Substation.
 - (d) Applicable Licensing Requirements.
 - (e) The Connection Assessment Process and Requirements.

The submissions that follow have been organized according to these categories and contain a discussion of each of the issues.

Issue 1: Capacity of the 230kV transmission system in the vicinity of the Chatham TS and the Lauzon TS

17. At the time of filing the Notice of Proposal, KEI understood the transmission capacity in the vicinity of the Chatham TS and the Lauzon TS to be 400MW. KEI's understanding was based on information outlined in the OPA's RES II Renewable RFP transmission matrix in Appendix Q "Transmission Constraints Matrix". [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 48, Lines 21-24]
18. In the evidence given by the IESO at the Technical Conference, the IESO stated that the transmission capacity in that same area is now 200MW. The IESO gave evidence that this transmission capacity has recently been set out in the OPA's RES III Renewable RFP transmission matrix in Appendix Q "Transmission Constraints Matrix". [Ms. Constantinescu, October 10, 2008 Technical Conference Transcript, Page 10, Lines 2-14]

19. KEI proposes to build a substation with a capacity of 100MVA, 25% of what it understood to be the available capacity at the time of its initial filing.
20. The amount of proposed capacity of the Proposed Substation was arrived at in consultation with Chatham-Kent and other developers after considering the proposed viable projects in the area that could realistically connect given the proposed projects' proximity to the Proposed Substation. It was on that basis that the size of the Proposed Substation was determined.
21. The parties considered that projects within an 8-10 km radius of the Proposed Substation should reasonably be considered. Costs to connect projects outside that area would prove to be prohibitive and uneconomical. [Answer to Chatham-Kent Interrogatory 1(b) filed November 19, 2007]
22. KEI has confirmed that the 40MW of proposed KEI generation would be ready to connect to the Proposed Substation when the Proposed Substation is complete. Therefore the 40MW of interconnection capacity would not be held in waiting. [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 31, Lines 27-28, Page 32, Lines 1-8]

Issue 2: Future Connection of the Proposed Substation

23. KEI's purpose in building the Proposed Substation is to facilitate the connection of four 10MW RESOP Projects equalling a total amount of 40MW of KEI or KEI affiliate proposed generation projects. The construction of a 100MVA substation to ease interconnect constraints in the area was first discussed at a meeting held by Chatham-Kent, and attended by KEI, Hydro One and other developers in the area. The meeting took place in order to discuss possible options that would allow generation projects that were currently frustrated from connecting due to lack of interconnection capacity. [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 37, Line 28 and Page 38, Lines 1-7] [Mr. Kenney, October 10, 2008 Technical Conference Transcript, Page 80, Lines 5-21]

24. As a result of the meeting, KEI attempted to explore a partnership with another developer through the creation of a Memorandum of Understanding to undertake the construction. Negotiations with the developer were not conclusive and a Memorandum of Understanding was not entered into. Given the uncertainty with respect to whether KEI would be successful in its attempts to pursue the Project as a result of the Notice of Review, KEI decided not to expend more time and resources on negotiations to enter into an agreement with other developers until KEI had more certainty that the Board would grant an Order allowing the Proposed Substation to proceed. KEI does remain open to partnering with other developers in order to construct the Proposed Substation. [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 34, Lines 17-27]
25. KEI remains committed to ensuring that its 40MW of generation is connected to the Proposed Substation. KEI has stated that it is willing to turn the process of identifying and determining which other generation projects will connect to the Proposed Substation over to another party.

Issue 3: Future Operation of the Proposed Substation

26. KEI has been asked to advise how it will operate the Proposed Substation. KEI has indicated that its intent is not to operate the Proposed Substation on an on-going basis, but rather transfer the Proposed Substation to Chatham-Kent.
27. When the Project was first contemplated, KEI had discussed with Chatham-Kent the possibility of transferring the Proposed Substation to them. It continues to be KEI's intent to transfer the Proposed Substation to Chatham-Kent. [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 37, Lines 12-15] [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 41, Lines 27-28 continuing on Page 42, Lines 1-3] KEI has also indicated that it is not opposed to discussing a transfer of the Proposed Substation to Hydro One. [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 52, Lines 9-12]

Issue 4: Licensing Requirements

28. Certain intervenors have asked KEI to explain its reliance on regulations to exempt it from transmitter licensing requirements. As outlined in its interrogatories [KEI Answers to Board Staff Interrogatories, Page 6, Response to Question #5] and further reiterated at the Technical Conference [Ms. Long, October 10, 2008 Technical Conference Transcript, Page 63, Line 23], KEI relies on O.Reg 161/99 s.4.0.2(1)(a) and (d). On the same date that KEI filed the section 81 Notice of Proposal (July 16, 2007), KEI submitted a letter to the OEB's Chief Compliance Officer, requesting confirmation that the regulation as referenced would be applicable to KEI's Project and that KEI would be exempt from further licensing requirements.
29. To date KEI has not received a response.
30. KEI takes the position that based upon its very limited contemplated transmission activities, KEI does meet the exemption criteria described in the exemption regulation. Given the limited transmission activities KEI will undertake before transferring the Proposed Substation, KEI seeks to be exempt from transmitter licensing requirements, for example, open access and the need for a transmission rate hearing. The exempting regulation requires that KEI charge reasonable costs. KEI has indicated that it would provide a transparent mechanism by which to explain how it determines reasonable costs. [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 53, Lines 16-22] [Mr. Paquette, October 10, 2008 Technical Conference Transcript, Page 54, Lines 4-5] [Mr. Gauthier, October 10, 2008 Technical Conference Transcript, Page 75, Lines 7-8]
31. KEI's position is that the Board would ultimately apply the exempting regulations to the activities proposed by KEI and make the determination as to whether the activities contemplated by KEI would be exempt from licensing and whether KEI would be required to hold a licence in addition to a Generator's Licence.

Issue 5: Connection Assessment

32. The IESO has indicated that the Proposed Substation itself would have a neutral effect on system reliability. [Ms. Constantinescu, October 10, 2008 Technical Conference Transcript, Page 12, Lines 15-26] [Ms. Constantinescu, October 10, 2008 Technical Conference Transcript, Page 13, Lines 26-28] [Ms. Constantinescu, October 10, 2008 Technical Conference Transcript, Page 15, Lines 21-28]
33. KEI has confirmed that it will undergo connection assessments as deemed necessary by the appropriate regulatory authority. [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 41, Lines 21-25]

C. SUMMARY

34. In accordance with section 81 of the OEB Act, KEI submitted its Notice of Proposal to the Board in order to provide notice that it was contemplating owning both generation and transmission/distribution assets. KEI sought the Board's approval before it commenced with the construction of the Proposed Substation in order that it would have regulatory certainty before it commenced detailed planning and construction.
35. KEI's purpose in constructing the interconnection asset was in fact to increase competition by allowing further generation to access the grid.
36. Chatham-Kent had identified that a lack of interconnection facilities prohibited additional generation from being connected. KEI sought to address the need after consultations with Chatham-Kent, Hydro One and other developers.
37. KEI has participated in the Notice of Proposal review. In addition to answering interrogatories, pursuant to Procedural Order 6, KEI attended a Technical Conference in order to respond to questions posed by the intervenors.
38. KEI has responded to concerns raised by the intervenors regarding the Proposed Substation and its possible affect on the competitive market. Examples of KEI's response to these concerns include that KEI has agreed to transfer the Proposed

Substation to an arms-length third party – Chatham-Kent. KEI has also solicited feedback from the intervenors on the type of queuing process they believe would best facilitate generation competition and KEI has agreed to allow a third party to manage the queuing process with respect to which generation projects will be connected.

39. KEI's purpose in constructing the Proposed Substation is to facilitate connection of its projects and in doing so create an opportunity for others to do so as well. KEI will be paying for the up-front construction costs of the Proposed Substation and bearing the economic risk associated with building the asset. KEI does not plan to operate the Proposed Substation but rather proposes to transfer it to Chatham-Kent. In return for taking the financial risk of constructing the Proposed Substation, KEI takes the position that it should be allowed to connect its 40MW of generation projects to the Proposed Substation with the majority of the Proposed Substation being made available to other unrelated generation developers.

D. RELIEF SOUGHT

For these above-stated reasons, KEI takes the position that the Proposed Substation would not have an adverse effect on the development and maintenance of a competitive market and therefore requests that the Board grant KEI an order approving its Notice of Proposal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10TH DAY OF NOVEMBER, 2008.

Original signed by Christine E. Long

Christine E. Long
Counsel for Kruger Energy Inc.