

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF notice of proposal by Kruger Energy Inc. (KEI)
under section 81 of *Ontario Energy Board Act, 1998* to construct and operate
a 100 MVA transmission substation in the Municipality of Chatham-Kent.

**REPLY SUBMISSIONS OF
THE INDEPENDENT ELECTRICITY MARKET OPERATOR**

Introduction

1. The Independent Electricity System Operator (the “IESO”) appreciates the opportunity to participate in the hearing of this matter and to make additional submissions in this regard. The IESO repeats and relies on its earlier submissions that were filed on November 26, 2007. As noted earlier, the IESO’s submissions are in accordance with its obligation to take all reasonable steps to ensure non-discriminatory access is provided to the IESO-controlled grid for all generators, retailers, and consumers and its responsibility for directing the operation of the transmission systems and administering the competitive wholesale electricity markets. The IESO is not opposed to different or new approaches to developing needed transmission facilities; however, such approaches should be consistent with and continue to adhere to principles which promote fair and non-discriminatory access to the IESO-controlled grid.

2. The transformer station (the “transformer station” or “proposal”) proposed by Kruger Energy Inc. (KEI) is somewhat unique relative to other proposals that have been considered by the Ontario Energy Board (the “Board”) to date under section 81 of the Ontario Energy Board Act, 1998. For example, these include:

1. TransAlta Energy Corp, RP-2000-0077;
2. Sithe Energies, RP-2001-0033;
3. Super Wind Power Inc., EB-2005-0249;
4. Erie Shores Wind Farm Ltd, EB-2005-0295;

5. Enbridge Ontario Wind Power LP., EB-2006-0012; and
6. Kruger Energy Port Alma Limited Partnership, EB-2008-0028

3. KEI's proposal differs from these other section 81 Notice of Proposals in a number of ways, key amongst these are:

- a) there is no associated generation or load connection project identified with the proposal;
- b) no System Impact Assessment (SIA) or Customer Impact Assessment (CIA) has been undertaken in support of the proposal;
- c) KEI is planning to provide transmission services to connect other generators to the IESO-controlled grid;
- d) the costs associated with the development and operation of the transformer station will be recovered from generation customers; and
- e) forty (40) percent of the capacity of the transformer station will be allocated to KEI and/or its affiliate(s). The remaining capacity will be set aside for use by KEI, KEI affiliates or KEI generator customers.

4. KEI's proposal raises a number of important issues and concerns; chief among these is the issue of access by others to the transformer station and the two transmission lines (i.e., C23Z and C24Z) to which the transformer station is proposed to connect. The issue of access by others is paramount in determining whether the impact of KEI's proposal will adversely impact the development and maintenance of the competitive electricity markets. Furthermore, the resolution of these issues will have important implications going forward, especially given the Board's endeavour to explore new ways for developing transmission assets, including enabler facilities.

5. From KEI's Argument in Chief [, Nov. 10, 2008, Page 1, Paragraph 2] we note that KEI is now characterizing its proposal as an "interconnection substation", however, for the purpose of testing whether the impact of KEI's proposal will adversely affect the development and maintenance of the competitive markets in Ontario, we do not believe that this reclassification affects this determination. The proposal is still a transmission facility; accordingly, it is the purpose and function of the proposed transformer station that should set the context of the Board's review, pursuant to the requirements of section 81 of the Ontario Energy Board Act, 1998.

6. As a general matter, the IESO believes that the issues set out by the Board provide an appropriate framework to test and confirm whether the impact of KEI's proposal will adversely affect the development and maintenance of the competitive electricity markets. The IESO's specific comments in respect of these issues are detailed below.

Issue 1: Whether the proposed substation could limit future access by other persons to the 230 kV lines between Chatham and Lauzon Transformer Stations.

7. The key aspect of this issue pertains to the question of whether "others"; in particular, all generators, retailers and consumers will have equal access to the proposed transformer station on a fair and non-discriminatory basis as afforded by the Electricity Act, 1998. Fair and non-discriminatory access to the IESO-controlled grid is a fundamental requirement for administering connections to the grid, as well as being one of the pillars on which the competitive electricity markets are developed and maintained. That is, all generators, retailers and consumers have a fundamental right to equal treatment with respect to their ability to access the transmission system to enable their participation in competitive electricity markets. Inhibiting access will also have consequential effects in the electricity markets. Although there are some exceptions to the access rule, these are reserved for situations involving exceptional or unusual circumstances. In light of the stated purpose and function of the proposed transformation station, we do not believe KEI meet any of these exceptional or unusual circumstances which merit an exemption from fair and non-discriminatory access requirements.

8. KEI claims that it is exempted from the requirements to obtain a transmitter license from the Board and the associated obligations to comply with the codes which, among others things, excuses KEI from providing open access to the proposed transformer station. Ontario Regulation 161/99 excuses a transmitter from three main obligations: (1) the requirement to obtain a transmitter license and the associated obligations to comply with Board codes; (2) the requirement to separate generation from transmission operations; and (3) the requirement to obtain a Board rate order to charge for the provision of transmission services. The exemption provisions recognize that in certain circumstances, a generator may also own transmission facilities which do not constitute their core business purpose or function; rather the transmission facilities simply relates to its generation business. KEI has stated that it is relying on clause

s.4.0.2 (1)(a) and clause s.4.0.2 (1)(d)(i) of the exemption regulation to exempt it from the need to become a licensed transmitter.

9. With respect to clause 4.0.2 (1)(a), KEI has provided no evidence to substantiate or confirm that the transformer station will indeed be located partially or entirely on land on which any of the facilities prescribed in clause 4.0.1 (1)(a) of this provision are situated (i.e., shopping mall, airport, marina, school, and industrial, commercial or office building, etc.). Furthermore, we fail to see on what basis the proposed transformer station would be located on such premises given the stated function and purpose of the transformer station.

10. Regarding clause 4.02 (1)(d)(i); it would appear that KEI is also misinterpreting this exemption provision given the stated purpose and function of transformer station. We believe this exemption is more appropriately reserved for situations where there are separate entities involved; for example, with ownership and operation of the generation station and related transmission facilities, and the rights to or sales of the station output.

11. As stated by KEI, the plan is to develop the transformer station to connect generators to the IESO-controlled grid, including those facilities that will be owned and operated by KEI or its affiliate(s). [Technical Conference Transcript, KEI's Mr. Cookson, Page 42, Lines 25 – 28]. Also, it was clearly stated that the development and operating costs associated with the provision of transmission services will be recovered from KEI's generation customers. [Technical Conference Transcript, KEI's Mr. Paquette, Page 51, Lines 2 -12]. KEI is effectively planning to provide transmission services on a commercial basis in much the same way as other licensed transmitters in Ontario. For these reasons, we believe that KEI is not exempted from the need to obtain a transmitter license and the associated obligations; most importantly, the need to provide fair and non-discriminatory access to the IESO-controlled grid given the stated purpose and function of the proposed transformer station. To do otherwise would provide KEI and/or its affiliate(s), and its future generation customers with an unfair advantage with respect to accessing the remaining capacity on circuits C23Z and C24Z. Ultimately, this scheme would limit access by others to the two transmission circuits impairing the effective development and maintenance of the competitive electricity markets.

12. As discussed earlier, we believe these provisions are reserved for exceptional circumstances of which KEI's proposal clearly is not. Given the stated purpose and function of the proposed transformer station, KEI doesn't meet the spirit of the exemption regulation nor the defined circumstances in which exemptions under Ontario Regulation 161/99 would otherwise apply.

Issue 2: Whether the proposed substation could impose limits on the IESO operation of the lines which could consequently restrict others persons.

13. The IESO confirms that the available capacity on the two transmission lines that KEI proposes to connect the transformer station is currently limited to 200 MW of available or remaining capacity (i.e., 100 MW per circuit). The IESO also confirms that the capacity limitation on the two lines has been known for some time and was conveyed to the general public as part of the Ontario Power Authority (the "OPA") renewable generation procurement process.¹ [Technical Conference Transcript, IESO's Ms. Constantinescu, Page 10, Lines 2-28]. In addition, the IESO noted that there are a number of generator connection proponents currently in the IESO connection assessment queue that also are competing for the remaining transmission capacity in the area. [Technical Conference Transcript, IESO's Ms. Constantinescu, Page 11, Lines 12-28].

14. It would appear that KEI is proposing that 100 MW of the 200 MW remaining capacity on the two transmission lines be assigned to KEI to enable the connection of the proposed transformer station. Of the 100 MW that would be assigned to KEI, forty percent (40 MW) would be retained for KEI and/or its affiliate(s), while the remaining capacity (60 MW) grandfathered to enable other future generation customer connections. The reserving or grandfathering of transmission capacity is not permissible. The IESO clarified this point at the Technical Conference and KEI has not yet formally acknowledged their understanding of this point. Although KEI was granted a significant amount of time and extensions, it is yet to produce any reasonable solutions to address these concerns. From its response to these concerns, KEI indicated that it doesn't know what rules would apply in these circumstances; as such, is unable

¹ The restricted zones and sub-zones and the laminations on the transmission circuits in each of these zones was published in 2005 as part of the RES II generation procurement process.

to comment on rules that it doesn't fully understand. [Technical Conference Transcript, KEI's Mr. Cookson, Page 43, Lines 12-19].

15. Furthermore, to the extent that KEI's proposal resulted in restricted or sub-optimal operation of the transmission system in the area (e.g., increased congestion or system losses), this could also adversely affect the development and maintenance of the electricity market.

16. The SIA and CIA would be made available to the Board in the normal course. They would also identify such potential adverse conditions, as well as propose solutions, as necessary, to eliminate or mitigate the effects of such conditions. Since an SIA or CIA has not been carried out in relation to the proposed transformer station, there is insufficient information available to enable the Board to reasonably determine whether the impact of this proposal will lead to any material adverse effects on the competitive electricity markets. As discussed earlier, this is one of the key differences between this proposal and other previous section 81 proposals considered by the Board.

Issue 3: The future operation of the transformer station; in particular, what the process would be for selecting generation projects for connection to the proposed station.

17. On November 19, 2007, KEI submitted that "the process by which generation customers will be allotted the transformation capacity of the substation will be similar to the queuing process established by Hydro One Networks Inc.; that is, first come, first serve basis." Further, KEI submitted that its intent is not to operate the transformer station on an ongoing basis but rather will transfer the station to Chatham-Kent. [Argument in Chief, Page 6 of 9, Paragraph 26]. However, by its own admission, the notion that the station will be transferred to Chatham-Kent is nothing more than simply an "idea" that was discussed at a meeting attended by KEI, Chatham-Kent and Hydro One. Above all, KEI stated that the idea was initially floated at this meeting and this constitutes the discussions to date. [Technical Conference Transcript, KEI's Mr. Cookson, Page 52, Lines 5 - 8].

18. KEI is yet to articulate how it intends to administer the connection process, including how the process will be similar or dissimilar to the Hydro One's process, to ensure that fair and open access is provided to the transmission system. This must be considered an important aspect

of the proposal and given due consideration especially given the goal is to allocate and least forty percent of the transformer station capacity for KEI and/or its affiliates. This goal was further reinforced in its Argument in Chief. At page 6, paragraph, KEI noted:

“KEI remains committed to ensuring that its 40 MW 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 4: The future operation of the proposed substation; in particular, whether the IESO and Hydro One connection processes could be adversely affected.

19. No specific generation or load has been identified for connection to the transformer station. The IESO indicated that if the proposed transformer station was constructed in line with this scenario, the station would be electrically neutral and not have an effect on the available transmission capacity. That is, if nothing is connected to the transformer station there will be no effect on the available capacity of the two transmission lines given that none of this capacity would be granted to KEI under this circumstance. However, it is expected that the station will be utilized if constructed. At Page 42, Lines 25 – 28 of the Technical Conference Transcript, KEI stated:

“Obviously we are not building the substation for nothing. We are building it because we think we would like to connect our projects to it and we would like to open up some interconnection capacity for other developers in this, as was mentioned before, wind resource-rich area.”

20. If only a portion of the transformation station is utilized, only that corresponding portion of available capacity on the two transmission lines would be granted upon fulfilment of all connection requirements (i.e., none of the remaining capacity on the two lines would be reserved or grandfathered to accommodate unutilized station capacity).

Conclusion

21. The IESO is supportive of new or enhanced approaches for developing needed transmission facilities in Ontario. However, the IESO strongly believes that such approaches should be consistent with and continue to promote fair and non-discriminatory access to the

IESO-controlled grid. The issue of fair and non-discriminatory access by others to the two transmission circuits should be paramount to the Board in determining whether the impact of KEI's proposal will adversely impact the development and maintenance of the competitive electricity markets. As demonstrated, given the stated purpose and function of the proposed transformer station, we do not believe that KEI meets the requirements for an exemption from the need to obtain a transmitter license and in providing fair and non-discriminatory access to the proposed transformer station. In addition, the IESO submits that, if approval is given by the Board, this should not be viewed as an automatic allocation of any of the available transmission capacity on circuits C23Z and C24Z or grandfathering of any capacity rights on these circuits for future use by KEI and/or its affiliate or other future connection customers.

All of which is respectfully submitted this 17^h day
of November 2008,

Original signed by

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