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BY COURIER

November 17, 2008

Ms. Kirsten Walli  
Secretary  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, ON.  
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Dear Ms. Walli:

**EB-2007-0691 – Submission of Hydro One Networks (“Hydro One”) regarding Argument-in-Chief of Kruger Energy Inc.**

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On September 13, 2007, the Ontario Energy Board (the “Board”) issued a notice of review of an application, filed under section 81 of the Ontario Energy Board Act (the “Act”), by Kruger Energy Inc. (“KEI”) to construct and operate a 100 MVA substation in the Municipality of Chatham-Kent. On November 10, 2008, KEI filed its argument-in-chief with the Board.

Section 82(3) of the Act provides that the Board shall approve a section 81 application if it determines that the impact of the proposal would not adversely affect the development and maintenance of a competitive market.

It is Hydro One’s view that the information provided by KEI to date, including KEI’s interrogatory responses on November 19, 2007, and the information provided by KEI at the technical conference on October 10, 2008, do not provide sufficient clarity on the specifics of KEI’s proposal to determine that the proposal does not adversely affect the development and maintenance of a competitive market.

KEI identified five issues in its argument-in-chief.

**1. Capacity of the 230 kV transmission system in the vicinity of Chatham TS and Lauzon TS**

It is Hydro One’s view that there is insufficient information to assess whether the generation projects envisioned by KEI to be connected to the proposed substation would limit future access by others to the 230 kV lines that supply the area, or impose limits on the Independent Electricity System Operator’s (the “IESO’s”) operation of the lines to restrict other persons. The IESO noted at

the technical conference that it had not received the information from Kruger on the generation projects envisioned to tie into the substation necessary to allow it to comment on whether or not those projects would limit others in their access to the 230 kV lines. The IESO further stated that, “in the absence of any technical specifications associated with the generation and the load, the IESO will not be able to carry out a feasibility study” to determine whether the generation behind the proposed substation would contribute to congestion in the general electrical area. Hydro One agrees with the IESO that additional information is needed to determine whether KEI’s proposal affects congestion.

The IESO also noted at the technical conference that “it is not the substation itself that would be the trigger for the allocation of transmission reservations. It is a committed generation project.” The IESO explained that a generation proposal would be considered committed if it has an executed Connection and Cost Recovery Agreement (“CCRA”) with a licensed transmitter. However, in response to the IESO’s question on what agreements KEI proposes to enter into with Hydro One or the IESO in relation to the proposed substation, KEI advised that it could not provide this information at this time. Due to the lack of specifics associated with KEI’s proposal, it is unclear even who the parties would be to a CCRA.

## **2. Future Connection of the Proposed Substation**

At the technical conference, Board Staff questioned how the exclusive negotiations and proposed memorandum of understanding between KEI and AIM Powergen are consistent with the development and maintenance of a competitive market. In its argument-in-chief, KEI states that it has decided to discontinue negotiations with AIM Powergen at this time, but notes that it remains open to partnering with other developers to construct the proposed substation. KEI further states that it is prepared to consider turning over to another party the process of identifying and determining which generation projects, other than its own, may also connect to the proposed substation.

Despite numerous interrogatories and the technical conference in this proceeding, the nature of the queuing process that KEI is proposing for the connection of others to the proposed substation remains unclear. In the absence of any clarity on the queuing process, or even whether KEI or some other unspecified party will assume responsibility for ensuring fair access to the proposed substation, Hydro One submits that there is insufficient information upon which to base a finding that KEI’s proposal would not adversely affect the development and maintenance of a competitive market through ensuring fairness in connecting generation projects, consistent with the principle of non-discriminatory access in a competitive market.

## **3. Future Operation of the Proposed Substation**

KEI states that it does not intend to operate the proposed substation and proposes to transfer it to either Chatham-Kent Hydro or Hydro One. However, there is no certainty that such a proposed transfer will take place. In its response to interrogatory #3 from the Ontario Power Authority on November 19, 2007, KEI states: “In the event that KEI is not able to transfer these assets, KEI and its partners in the Project would operate this system according to all applicable regulations and

rules.” KEI also notes in its argument-in-chief that it seeks to be exempt from any requirement to provide open access for others to its proposed substation.

Hydro One submits that the uncertainty surrounding KEI’s proposed transfer leaves open the possibility that the development and maintenance of a competitive market will be adversely affected by the lack of commitment on the part of KEI to ensure non-discriminatory access to others.

#### **4. Licensing Requirements**

KEI states that it should be exempt from the requirement, under s. 57(a) of the Act, to hold a transmitter’s licence, based on O.Reg. 161/99 s. 4.0.2(1) (a) and (d), since:

- i) KEI will not transmit electricity for a price that is greater than that required to recover all reasonable costs.*

In response to the IESO’s question during the technical conference regarding the type of disclosure that KEI intends to provide to allow an external party to assess the reasonableness of its costs, KEI replied that it had not yet gone “into that level of detail.”

- ii) The proposed substation will be located on land where an industrial or commercial building is located.*

It is unclear what “industrial or commercial building” (Technical Conference Transcript, October 10, 2008, Page 47, Lines 2-6) is being contemplated by KEI with respect to this exemption condition. It is Hydro One’s view that an industrial or commercial building that would normally be found at, or typically form part of, a generating station or transmission substation should not qualify a transmitter to be exempted from the requirement to hold a transmitter’s licence. KEI needs to identify what industrial or commercial building it is referring to. In Hydro One’s view, the phrase “industrial, commercial or office building” in O.Reg. 161/99 s. 4.0.1(1)(a) was intended to refer to a site where load is used (e.g. a factory). As such, Hydro One believes that an exemption granted in this manner would be inconsistent with the intent of the Regulation.

- iii) KEI is a generator and transmits electricity only for the purpose of conveying it into the IESO grid.*

In its response to Chatham-Kent Hydro’s interrogatory #3(b) on November 19, 2007, KEI states that it would not compete for any distribution load customers. Assuming this means KEI will not connect distribution load customers to the proposed substation, it is still unclear whether KEI would connect transmission load customers. The connection of load customers to the substation would require KEI to transmit electricity for a purpose other than conveying electricity only into the IESO grid.

KEI states (in paragraph 12) that it “filed [its] Notice of Proposal in order to address the threshold issue of whether it could proceed to develop transmission/distribution assets....”

KEI also noted at the technical conference that its four 10 MW generation projects that it plans to connect to the substation are all Standard Offer Program (“SOP”) projects, whereupon Board Counsel clarified that SOP Rules require generation projects to connect to a licensed distributor’s existing distribution system. But despite this clear intention to develop distribution assets and to connect generation facilities at distribution voltages, there has been no indication from KEI that it intends to apply for a distributor’s licence. It is unclear to Hydro One how KEI proposes to own and operate a distribution system without a distributor’s licence.

Hydro One is of the view that, even if the Board were satisfied that a legislative basis exists to exempt KEI from the requirement to hold either a transmitter’s or distributor’s licence, it is essential that KEI should still be required, at a minimum, to provide non-discriminatory access in order to ensure the proper maintenance of the competitive market.

Hydro One acknowledges that the transfer of the proposed substation to a licensed transmitter or distributor would address many of the regulatory issues raised in this proceeding.

## **5. Connection Assessment**

KEI notes (in paragraph 32) that the IESO indicated at the technical conference that the proposed substation itself would have a neutral effect on system reliability. It should be clarified, however, that this conclusion was drawn by the IESO because it was unable to assess the effects of the proposed substation on the IESO-controlled grid without the specific information needed about the connecting generation. Consequently, the IESO was also unable to determine whether the substation, once connected to such generation, would contribute to congestion in the general electrical area, with the result of limiting access to others.

## **Conclusion**

Hydro One submits that the information necessary to make a proper finding on whether the impact of KEI’s proposal would adversely affect the development and maintenance of a competitive market has simply not been made available to the Board in this proceeding.

Sincerely,

ORIGINAL SIGNED BY SUSAN FRANK

Susan Frank

- c. Mr. Guy Paquette, Kruger Inc.  
Ms. Christine Long, Borden Ladner Gervais LLP  
EB-2007-0691 Intervenors