



ONTARIO ENERGY BOARD

STAFF SUBMISSION

November 17, 2008

KRUGER ENERGY INC.

NOTICE OF PROPOSAL UNDER SECTION 81

EB-2007-0691

Introduction

On July 17, 2008, Kruger Energy Inc. ("KEI") filed a notice of proposal under section 81 of the *Ontario Energy Board Act, 1998* (the "Act"). In the section 81 notice of proposal, KEI stated that:

The Project consists of the construction and operation of a 100 MVA substation which will connect potential future generation projects(s) of KEI or an affiliate of KEI to the IESO-controlled grid. In future, other generation facilities, unrelated to KEI may wish to connect to the Project. The Project would be located in the Municipality of Chatham-Kent, near the Bloomfield Business Park, and the connection would be to the 230 (kV) lines between the Chatham TS and the Lauzon TS.

On September 13, 2007, the Board issued a notice of review of KEI's notice of proposal. The Board then proceeded with a review of the proposal pursuant to section 82 of the Act. Section 82(3) of the Act states that the "Board shall make an order approving a proposal described in section 81 if it determines that the impact of the proposal would not adversely affect the development and maintenance of a competitive market." Therefore, the sole issue in this proceeding is whether the impact of the proposal adversely affects the development and maintenance of a competitive market.

A technical conference was held on October 10, 2008. KEI, Chatham-Kent Hydro, the Independent Electricity System Operator (the "IESO"), the Ontario Power Authority (the "OPA"), and Hydro One Networks Inc. ("Hydro One") attended the conference. During the technical conference, KEI stated that it plans to connect four 10 MW wind projects to the substation. Ultimately, KEI plans to seek Renewable Energy Standard Offer Program ("RESOP") contracts for these projects.

After reviewing the record, Board staff is providing this submission.

Board staff will comment on the following matters:

- (a) the capacity of the 230 kV lines between the Chatham Transformer Station and the Lauzon Transformer Station; and
- (b) the future operation of the proposed KEI substation.

The Capacity of the 230 kV Lines Between the Chatham Transformer Station and the Lauzon Transformer Station

In procedural orders related to this file, the Board has stated that it expects the parties to address the capacity of the 230 kV lines between the Chatham Transformer Station and the Lauzon Transformer Station, in particular, whether the proposed substation could:

- (a) limit future access to the 230 kV lines by other persons; and
- (b) impose limits on the IESO operation of the lines which could restrict other persons.

During the technical conference, the IESO provided the following information:

- (a) the current available transmission capacity in the area of the KEI proposal is 200 MW;
- (b) the KEI proposed substation, in itself, is electrically neutral;
- (c) if the substation were built, there would be no allocation of capacity by the IESO to the substation;
- (d) proponents with power purchase agreements or connection cost recovery agreements with a transmitter are placed in the IESO queue; however, as KEI currently has neither power purchase agreements nor connection cost recovery agreements with a transmitter, KEI would not be placed in the IESO queue for allocation of capacity even if the substation were built; and
- (e) in response to the scenario in which there are two generation projects in the queue, both with power purchase agreements, one connecting through the KEI substation (presuming it is built) and one not connecting through the KEI substation, the IESO stated that it would not treat the generation projects differently with respect to their order in the queue and allocation of capacity.

Submission

Based on the IESO's responses during the technical conference, Board staff submits that the proposed KEI substation, in and of itself, with no generation connected to it:

- (a) does not limit future access to the 230 kV lines by other persons; and
- (b) does not impose limits on the IESO operation of the lines which could restrict other persons.

However, Board staff notes that KEI would not build the substation to be an electrically neutral asset and it is clearly KEI's intention to connect generation projects. On November 26, 2007, the IESO stated that a System Impact Assessment ("SIA") and a

Connection Impact Assessment "would be of value to the Board in determining whether such a proposal will in fact have any adverse impacts on the development and maintenance of the IESO-administered market." At the technical conference, the IESO stated that an SIA for the substation as an electrically neutral asset would not provide any value to the Board. The IESO also stated that an SIA that would have value to the Board would be one that indicates the impact that future generation projects connected behind the substation would have on system reliability and congestion. However, the IESO indicated at the technical conference that it has yet to receive "any information from Kruger with respect to the generation projects that they might propose to tie into the substation." (page 15)

Board staff notes that the lack of clarity in the record is problematic and presents uncertainties regarding the notice of proposal.

The Future Operation of the Proposed KEI Substation

In procedural orders related to this file, the Board has stated that it expects the parties to address the future operation of the proposed substation, in particular:

- (a) what the process would be for selecting generation projects for connection to the proposed substation; and
- (b) whether the IESO and Hydro One connection processes could be adversely affected.

The future operation of the substation has been described in the notice of proposal, response to interrogatories and evidence filed by KEI. The future operation of the substation was more fully described at the technical conference. KEI proposes to:

- (a) build the 100 MVA substation connecting to 230 kV between Chatham TS and Lauzon TS;
- (b) connect its four 10 MW projects to the substation;
- (c) connect approximately 60 MW of other parties' projects; and
- (d) transfer the substation to Chatham-Kent Hydro's ownership.

KEI's position is that once the substation is transferred to Chatham-Kent Hydro, KEI's four 10 MW projects would comply with the OPA's current RESOP rules and thus be eligible for Standard Offer Program contracts.

Submission

It remains unclear to Board staff why the proposed substation is approximately 60% larger than KEI's needs. Board staff also has concerns over how other parties' projects will be connected to the substation.

Connection of other parties' projects to the substation was the subject of several interrogatories and was discussed at length during the technical conference. In its response to interrogatories on November 19, 2007, KEI stated 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. ("Hydro One"); that is a "first-come, first served" basis. However, proponents will have to demonstrate a "readiness" for construction ... such that capacity does not get allocated to projects with a minimal chance(s) of being implemented.

Board staff notes that during the technical conference, it became clear that KEI's four 10 MW projects would have priority access to the substation. At page 53, Mr. Cookson, on behalf of KEI, stated that "we would reserve 40 megawatts or 40 percent of the proposed capacity."

In connecting the generation projects of other parties to the proposed substation, KEI would be serving in the role of a distributor/transmitter. On November 19, 2007, KEI stated that it "takes the position that with respect to the operation of the Substation it will be exempt from distributor and transmitter licensing and as such will transmit and distribute electricity for a price no greater than required to recover all reasonable costs." KEI has referred to sections 4.0.2(1)(a) and 4.0.2(1)(d) of Ontario Regulation 161/99.

It is Board staff's view that KEI has not provided sufficient information to determine whether KEI is exempt from licensing requirements. If KEI is not exempt from licensing requirements, it is also not exempt from the need to provide non-discriminatory access. The connection of its projects ahead of other projects may violate that principle.

Board staff is also concerned about who the future operator of the substation will be. In its original notice of proposal, KEI stated that it would be the operator of the substation. More recently, on October 10, 2008, counsel for KEI stated that (page 56) "other than the 40 megawatts of projects that my client is interested in connecting, they do not want to be the arbiter of what generation projects get hooked on to that substation."

Notwithstanding this evolution in KEI's role with respect to the substation, KEI's proposed sequence of events, including transfer of the asset to Chatham-Kent Hydro, includes a period of time, short or long term if the transfer does not take place, during which KEI would be acting as a distributor/transmitter. In its argument-in-chief, KEI took the position that it would meet the exemption criteria in Ontario Regulation 161/99 based on its very limited contemplated transmission activities. Board staff does not agree with that position. Board staff agrees with counsel to Hydro One, who observed at the technical conference that "there is no exemption for parties who propose to carry on only limited transmitter activity." (page 63)

Concluding Remarks

Board staff is concerned about the lack of clarity surrounding this notice of proposal.

The evidence provided is insufficient to determine whether the substation, with generation connected to it, would have an adverse effect on the development and maintenance of the competitive market.

Board staff is also concerned about how this project interacts with the Standard Offer Program. Under the current rules for RESOP, it is unclear how building this substation and attaching its generation projects to the transmission system will assist KEI in obtaining Standard Offer Program contracts since those contracts are currently only for generation connected to the distribution system. It is equally unclear whether Chatham-Kent Hydro has any interest in taking over the ownership and operation of the proposed KEI substation once it is built. If KEI connects its generation projects to the substation first and then transfers the substation to Chatham-Kent Hydro, and if Chatham-Kent Hydro already has a queue for connecting generation projects to its distribution system, KEI will have effectively jumped the queue. This could have an adverse impact on the development and maintenance of a competitive market. Furthermore, the fact that KEI will connect its projects to the substation before opening access to the substation to the projects of other parties may also adversely affect the development and maintenance of a competitive market.

All of which is respectfully submitted