

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
Section 81;

AND IN THE MATTER OF a Notice of Proposal by Kruger Energy Inc.
Under Section 81 of the *Ontario Energy Board Act, 1998*

**REPLY SUBMISSIONS OF KRUGER ENERGY INC.
FILED: NOVEMBER 21, 2008**

Introduction:

1. Kruger Energy Inc. ("KEI") is in receipt of submissions from Ontario Energy Board Staff ("Board Staff"), the Independent Electricity System Operator, (the "IESO"), the Ontario Power Authority, (the "OPA"), Hydro One Networks Inc., ("Hydro One") and the Power Workers' Union, (the "PWU") with respect to a Notice of Proposal filed under section 81 of the *Ontario Energy Board Act, 1998*, (the "OEB Act") seeking approval of a proposed substation (the "Proposed Substation"). KEI repeats and relies upon its submission filed November 10, 2008 and does not intend to reiterate its evidence. KEI offers only the following clarifying comments with respect to the submissions made by Board Staff, the IESO, the OPA, Hydro One and the PWU.
2. Given that the submissions from Board Staff and the intervenors focus on many of the same topics, KEI has organized its reply submissions by addressing the following issues:
 - Capacity of the 230kV lines
 - Connection of other Projects
 - Future Operation of the Proposed Substation
 - Licensing Requirements
 - The Interests of Chatham-Kent Hydro Inc. ("Chatham-Kent")
 - The Role of other Generators
 - The Renewable Standard Offer Program
 - Lack of clarity surrounding the Notice of Proposal

Capacity of the 230 kV Lines

3. Board Staff has concluded that the Proposed Substation in and of itself is electrically neutral. However Board Staff in its submission proceeds to contemplate the effect that

connected generation will have with respect to the Proposed Substation. Board Staff sets out the following:

...the IESO has 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 (page 3 of the Board Staff Submission).

4. However, it is also important to note that the IESO further stated at the Technical Conference [Ms. Constantinescu, October 10, 2008 Technical Conference Transcript, Page 14, Lines 11-22; Page 17, Lines 6-13 and 18-20, Page 18, Lines 8-10] that the IESO could not complete an SIA with respect to future generation projects, unless it had information with respect to all the generation projects that would connect to the Proposed Substation. Therefore KEI would be required to provide details regarding 100% of the generation connecting before the IESO would complete its review. A great deal of the concern raised by intervenors with respect to the Proposed Substation has been directed at KEI's proposals that it would a) partner with other generation developers who in turn would connect projects to the Proposed Substation b) that KEI would use a queuing system to select other generators to connect or c) that a third party could select generation projects.
5. KEI therefore finds itself in the difficult position of facing opposition to its proposed methods of connecting generation to the Proposed Substation, while at the same time being expected to meet a requirement that all the connecting generation be selected before the IESO completes an SIA.
6. The IESO also stated at the Technical Conference that it would not allocate generation to the Proposed Substation from the IESO queue until such time as the Proposed Substation had been constructed so as to not complete system planning on the basis of a hypothetical asset being available. [Ms. Constantinescu, October 10, 2008 Technical Conference Transcript, Page 24, Lines 18-28; Page 25, Lines 1-6]. This position again creates difficulty for KEI in providing detail with respect to all generation that would connect to the Proposed Substation.

Connection of other Projects

7. Board Staff has indicated in its submission that it is unclear why KEI has proposed to build a substation which is approximately 60% larger than its own needs. Indeed, KEI could have contemplated building a substation that would meet its own need and not address the needs of any other generator, but given the discussion with other developers, Chatham-Kent and Hydro One, KEI did not do so.
8. In an attempt to provide a resolution to an interconnection capacity deficiency identified by Chatham-Kent, KEI met with Chatham-Kent, Hydro One and other generation developers in order to attempt a solution to create much needed interconnection capacity.
9. As Mr. Kenney indicated at the Technical Conference [Mr. Kenney, October 10, 2008 Technical Conference Transcript, Page 81, Lines 1-10], Chatham-Kent was in no position to assist the developers at that time with the proposed infrastructure. The entities at the meeting sought to reach what would be a solution for projects located in the area and which could realistically (from an economic stand-point) connect to a substation to be constructed.
10. Board Staff has indicated in its submission that it became clear to Board Staff that KEI's projects would have priority to connect to the Proposed Substation (page 4 of the Board Staff Submission). It has always been KEI's intention to connect its projects to the Proposed Substation. [KEI Notice of Proposal filed July 16, 2007, Sections 1.5.1 and 3.1.1; KEI letter to Board Staff dated November 5, 2007, Page 2, second last paragraph and Exhibit A, second paragraph] KEI could have contemplated building a substation which would only satisfy its need, but it sought to build a larger substation which would alleviate the need of other generation developers in the area and which had been proposed in discussion with Chatham-Kent.

Future Operation of the Proposed Substation

11. Despite KEI advising that its plan is to transfer the Proposed Substation to Chatham-Kent, Board Staff has raised the possibility that there could be a period of time before

which the transfer takes place that KEI would be acting as a de facto transmitter/distributor of the Proposed Substation.

12. KEI has repeatedly stated that its intention is to transfer the asset to Chatham-Kent. KEI as part of its Notice of Proposal filed a letter from the Mayor of Chatham-Kent which supported the location of the Proposed Substation as means to connecting further renewable generation. KEI stated at the Technical Conference that it planned on having generation projects ready at the same time that the Proposed Station was operational, [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 58, Lines 22-27; Page 60, Lines 24-26] preventing any time lags between when the generation projects would be operational, and the Proposed Substation transferred. While KEI knows of no reason such a transfer should not take place, KEI indicated at the Technical Conference [Mr. Cookson, October 10, 2008 Technical Conference Transcript, Page 52, Lines 11-12] that it would not be opposed to considering a transfer to Hydro One.
13. Hydro One has acknowledged that many of the regulatory issues raised in this proceeding would be alleviated by the transfer of the Proposed Substation to a licensed transmitter or distributor. [Hydro One Submission, page 4]

Licensing Requirements

14. KEI has taken the position that the proper avenue in which to consider whether the activities proposed by KEI qualify under the exempting regulation would be by way of analysis by the Board's Chief Compliance Officer on the basis of the proposed activities KEI ultimately undertakes. KEI submitted a request for review to the Chief Compliance Officer the same day it filed its Notice of Proposal.
15. The PWU's submission that "there is a definite likelihood that KEI will not abide by applicable regulations and rules" on the basis of a statement by a representative of KEI with respect to being unclear concerning certain connection rules in a particular case should be rejected.

16. KEI will have a Generation Licence and as such will be required to comply with its requirements including Section 4.1 of the Generation Licence which requires a Licensee to comply with all applicable provisions of the OEB Act, the *Electricity Act, 1998* and regulations under these acts, except where the Licensee has been exempted from such compliance by regulation. Furthermore, asking the Chief Compliance Officer for a ruling as to whether proposed activities comply within the regulations is inconsistent with not abiding by rules and regulations. It is quite the contrary.

The Interests of Chatham-Kent

17. Earlier in this submission, KEI has addressed the concerns Board Staff has raised with respect to whether Chatham-Kent is interested in taking over ownership and operation of the Proposed Substation. Mr. Kenney attended at the Technical Conference and gave a short statement with respect to the genesis of the discussion among the various parties with respect to the Proposed Substation. Mr. Kenney was not asked any questions by Board Staff nor the intervenors.
18. Board Staff has raised the issue that the Proposed Substation may in fact have the effect of surpassing other generation projects that are in the queue for connecting generation projects to the Chatham-Kent distribution system. It is important to note that the size of the Proposed Substation was decided on the basis that it would include those generation projects within the area that could reasonably connect to it on the basis of it being economically feasible. Simply put, the parties considered what projects required connection when they decided upon the size of the Proposed Substation.

The Role of other Generators

19. Many of the intervenor submissions raise the issue of whether the Notice of Proposal as contemplated will adversely affect the development and maintenance of a competitive market specifically as it relates to other generation developers in the area. In particular, the PWU has highlighted the letter of Allus Power submitted September 5, 2007.

20. KEI submits that developers as identified by Chatham-Kent, not KEI, were invited to the meeting to suggest possible solutions to the interconnection problem.
21. As part of the Board's review, KEI was required to and did publish notice of the Notice of Proposal in the local newspaper. Two developers choose to intervene, Invenergy and Allus Power. Their role in this proceeding consists of only Allus Power filing interrogatories. Despite the opportunity to do so, no developers participated in the Technical Conference.

The Renewable Standard Offer Program ("RESOP")

22. The OPA in its submission draws attention to the fact that the OPA is currently undergoing a review of the RESOP program that "includes an examination of connection limits and criteria."
23. KEI draws the Board's attention to two facts with respect to the OPA's submission. Proposed changes to the RESOP Program were first introduced on May 13, 2008, well after KEI's Notice of Proposal had been submitted. KEI noted at the Technical Conference that it had sought to delay the Technical Conference until such time as the RESOP Rules were finalized in order to have better clarity with respect to the RESOP Rules. [KEI letter to Board Staff dated June 9, 2008 requesting an adjournment of the Technical Conference until such time as the changes to the RESOP Rules have been finalized and established.] The Rules for the RESOP program are currently under review. [Mr. Mia, October 10, 2008 Technical Conference Transcript, Page 77, Lines 14-17]. They still have yet to be finalized.

Lack of Clarity Surrounding the Notice of Proposal

24. KEI takes note of Board Staff and various intervenors comments that the Notice of Proposal lacks clarity.
25. Various reasons contribute to what Board Staff and the intervenors have described as a "lack of clarity."

26. As stated above, it was announced on May 13, 2008 that the RESOP Rules might be altered resulting in significant changes to the program as originally introduced. Approximately six months later new rules have not yet been announced. This creates a level of uncertainty for KEI with respect to the generation projects it wants to connect to the Proposed Substation.
27. In response to intervenors' concerns with respect to KEI selecting generation projects to the Proposed Substation, KEI has suggested that it would be amenable to a third party making the determination as to the other generation projects that would connect to the Proposed Substation. KEI does admit this is a departure from its original plans to partner with other private developers or establish a queuing process by which projects ready for connection would be connected. With respect, KEI does not see this change in position as a lack of clarity in its proposal, but rather a willingness to work with Board Staff and intervenors to address concerns with respect to competition. In an attempt to address intervenors concerns with respect to competition, KEI has agreed to consider other ways by which additional generation could be selected.
28. Other concerns have been raised with respect to clarity surrounding the operation of the Proposed Substation. KEI again has addressed this concern by confirming its intent to transfer the Proposed Substation to Chatham-Kent. KEI has indicated it would be willing to consider transferring the Substation to another entity to operate. However, it should be noted that Chatham-Kent has not indicated that it is not interested in operation the Proposed Substation. As the Proposed Substation was first discussed with Chatham-Kent, KEI has not negotiated with another party nor will it until such time as Chatham-Kent indicates it is not interested in operating the Proposed Substation.

Conclusion

29. The IESO in its submission characterized the Proposed Substation as "somewhat unique relative to other proposals that have been considered by the Board under section 81."

30. The uniqueness of this proposal should not preclude the Board from considering it as a viable option of connecting needed supply.
31. The PWU has argued that to grant this Notice of Proposal would be tantamount to opening the floodgates for other applicants. In fact, the very nature of the Notice of Proposal provides the Board the opportunity to review each proposed project on its merits.
32. KEI asks that the Board consider the benefit of enabling further generation to be developed and connected as contemplated by this Notice of Proposal.
33. For all of the foregoing reasons, KEI requests that the Board make an Order approving its Notice of Proposal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21st DAY OF NOVEMBER, 2008.

BORDEN LADNER GERVAIS LLP
Per:

Original signed by Christine E. Long

Christine E. Long
Counsel to Kruger Energy Inc.