

26 March 2008

The Honourable Howard I. Wetston, Q.C.
Chairman, Ontario Energy Board

By e-mail

Dear Mr. Wetston:

Re: EB-2007-0791 OPA 2008 expenditure review

I write in response to Mr. Cass' letter of March 24th (in response to mine of the 20th). Mr. Cass suggests that it is more appropriate for the panel hearing the case to determine whether it is advisable for the panel to be expanded to three members. We wrote to you rather than the Panel as it is our understanding that it is your responsibility as the Chair of the Board to determine panel configuration. In our respectful submission it would be unfortunate if the panel were to invest considerable effort hearing the matter before determining that it must be re-heard with a larger panel. Of course, if you view the concern as one that should be addressed to the panel at first instance we would respect that.

I would add that Mr. Cass' suggestion that we are 'panel shopping' is unfounded and unfair. First, we have not objected to the current panel, we simply seek your consideration of its expansion to an odd number given the split decision on this matter last year. Mr. Cass' assertion is also undermined by the very facts he recites, that the panel has already dealt with an aspect of hearing scope in its issues day determinations. Indeed the one disputed issue was the one we raised and that matter was added, over OPA's objections, to the issues list. Accordingly, we have no reason to be dissatisfied with the current panel. Indeed, we stress that no dissatisfaction or disrespect in regard to the panel should be taken to be implied by our request. Rather, we are simply seeking a timely consideration of this potential procedural problem by the Chair of the Board who, it is our understanding, is the person empowered to address it.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Poch', with a stylized flourish at the end.

David Poch

Cc: all parties