



HARRISON PENSA

January 14, 2021

Sent by Email

Registrar
Ontario Energy Board
P.O. Box 2319
27th Floor, 2300 Yonge St.
Toronto, Ontario, M4P 1E4

Re: EB-2019-0166 – OPI Request for New Evidence Submission under OEB Rule 11

On behalf of the OPI and Mr. McIntosh, this letter responds to the objections of MPAC, echoed by the Municipalities, to the consideration of the new evidence enclosed with my letter to the Board dated December 30, 2020.

MPAC's contention appears to be that, because Mr. McIntosh might have been aware of the facts contained in his affidavit before the hearing of this matter on December 2, 2020, the affidavit is not "new information" and therefore that the Board should not consider it. This is not an accurate or purposive reading of the OEB Rules, which give the Board appropriately broad discretion over the receipt of evidence (including additional evidence under rules 11.01 and 11.04, for the purpose of obtaining a sufficient and satisfactory understanding of the issues). The Rules are explicitly prefaced with the provision that they be "liberally construed in the public interest to secure the most just, expeditious and efficient determination on the merits of every proceeding before the Board".

The public interest and the interests of justice require that the Board make its decision with an accurate appreciation of the facts on which it is relying to make its decision. The timing of Mr. McIntosh's evidence does not change its importance to the issues before the Board, or the consequences that would result from making a decision without the benefit of evidence.

OPI itself did not anticipate that it would have evidence relevant to the Lagasco pipeline designation issue, as it has never owned or operated any of the pipelines at issue in the proceeding. It is only by happenstance that Mr. McIntosh, the chairman of OPI, has professional experience working with a different Ontario producer that puts him in the position of being able to state that MPAC assessed a set of pipelines without the owner ever providing information about the pipelines to MPAC. And it was only because MPAC's theory of argument (articulated at the hearing) was predicated on the owner being the *only* possible source of such information that the importance Mr. McIntosh's evidence became apparent to him. The timing of Mr. McIntosh's evidence is clearly not tactical, as there would be no strategic purpose served by this timing.

HARRISON PENSA LLP
Lawyers

Admitting the McIntosh evidence would serve only to help the Board make a better informed decision on the important issue of designation under subsection 25(2) of the Act. Declining to admit the evidence would serve only to impede the Board's ability to make a fully informed decision on the issue.

OPI respectfully submits that Mr. McIntosh's affidavit should be received in evidence.

We would be pleased to respond to any inquiries that the Board may have.

Yours truly,

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

Tim McCullough