

January 8, 2007

Gord Miller
Environmental Commissioner of Ontario
1075 Bay Street, Suite 605
Toronto, ON M5S 2B1
Canada

Re: Ministry of Environment response to CELA request for review of Environmental Assessment Act exemption of Ontario Power Authority Plan

Dear Mr. Miller,

I understand that on December 22, 2006 the Ministry of the Environment rejected CELA's application for a review of the regulation exempting the Ontario Power Authority's (OPA) Integrated Power System Plan (IPSP) from the requirements of the Ontario *Environmental Assessment Act*.

In its decision, the Ministry relies on the grounds provided at the time of the adoption of the exempting regulation (i.e. that the exemption is an 'administrative' matter and is not environmentally significant) for not posting the proposed regulation on the EBR registry. I note that in your Press Release of June 19, 2006, you observed at the time that decision in question was "clearly environmentally significant" and should have been posted on the EBR registry for public comment before its adoption.

The ministry's rejection of the Application for Review clearly does not respond to the specific issues raised in the application, such as consistency of the decision with the ministry's own Statement of Environmental Values, or the precedent that all previous regulations exempting from the *Environmental Assessment Act* have been regarded as sufficiently environmentally significant to warrant posting on the EBR registry for public comment prior to decision-making.

The significance of the decision is further reinforced by the consideration that more than 2,000 Ontario residents filed comments in response to the "information posting" regarding the exemption subsequently provided by the ministry. An overwhelming majority of these comments opposed the government's exemption decision.

As you know, the OPA IPSP process is moving forward at a very rapid pace. The overall handling of environmental issues in the development of the IPSP has been extremely weak. At the same time the Ontario Energy Board (OEB), in its December 27th report on the board's approach to the review of the IPSP, has made clear that it only intends to

engage in a cursory examination of environmental issues, a situation which further reinforces the significance of the decision to exempt the IPSP from the requirements of the *Environmental Assessment Act*. The IPSP is scheduled to be submitted to the OEB in March of this year, with hearings expected to commence this summer.

Given these considerations, if your assessment of the consistency of the ministry's actions in relation to the posting of the exemption and subsequent response to the request for review with the provisions and intent of the EBR is deferred until the publication of your next annual report to the Legislative Assembly, it may be too late to affect decision-making. Rather, the situation should be addressed through a special report to the Legislature, as provided for by section 58(4) of the EBR.

I would be pleased to discuss our assessment of the situation with you or your staff.

Yours sincerely,



Mark S. Winfield, Ph.D.
Director, Environmental Governance