VIA E-MAIL
CONFIDENTIAL

Mr. Rafe Engle
R.S. Engle P.C.
26 Sussex Avenue
Toronto, ON M5S 1J7

PRIVILEGED AND CONFIDENTIAL – 3rd DRAFT OF OCT. 27

Dear Mr. Engle:

ASC Ref. # 142792, 142861 and 142892 – Fair Hydro Plan

We are writing in response to Janet Feasby's letter of September 25, 2017 and our call with you and Ms. Feasby of October 3, 2017. The Ministry of Energy would like to assure the ASC that its advertising is intended to inform Ontarians about the substantial benefits of new legislation designed to reduce hydro bills for residential consumers and is in no way intended to mislead consumers about the Fair Hydro Plan Program ("**Program**"). The Ministry stands behind the truthfulness of the messaging and intends to continue communicating with Ontarians about the benefits of the Program once this matter is resolved.

Commented [NC(1]: In this context, could this mean another ad campaign? Not sure we should be saying that.

Commented [vdVJ(2]: We do not currently have any new plans for ongoing marketing on this program SUGGESTED LANGUAGE:

The Ministry stands behind the truthfulness of the messaging but does not intend to continue any paid marketing for the Program..

A. SUMMARY OF THE ISSUES

As a preliminary matter, the Ministry's position is that, with the exception of the complaint related to the improved reliability of Ontario's electricity system, the two other complaints – i.e., pertaining to the 25% reduction of household electricity bills and bill affordability – are "non-reviewable" in accordance with the ASC's *Consumer Complaints Procedure* ("**Procedure**"). As explained in more detail below, the regulations under the *Ontario Fair Hydro Act, 2017* (the "**Act**") specifically authorize the making of these claims.[1] Additionally, the regulations require electricity suppliers to make such claims on their invoices and on bill inserts. Thus, it would be inconsistent with the regulations for the ASC to declare that the Ministry amend or withdraw advertising containing the very claims that the elected representatives of the Ontario Legislature have required electricity suppliers to make. On this basis alone, the ASC should reconsider whether it is appropriate to pursue these complaints further.

On our October 3, 2017 call, you indicated that the ASC received complaints in respect of three specific claims:

1) "Household electricity bills will be an average of 25% less" ("**25% reduction claim**");

2) "Recent changes have made bills more affordable" ("**affordability claim**"); and

3) "Upgrades to our [Ontario's] electricity system have made it more reliable for Ontarians" ("**reliability claim**").

None of these claims contravenes the *Canadian Code of Advertising Standards*. In brief, and as discussed in more detail below:

[1] *Ontario Fair Hydro Plan Act, 2017*, S.O. 2017, c. 16, Sched. 1, online: https://www.ontario.ca/laws/statute/17o16.

1) **The 25% reduction claim is accurate and does not contravene section 1(a) of the Code.**

- The Act and accompanying regulations task the Ontario Energy Board ("**Board**") to take measures to ensure that a typical residential consumer receives an invoice that is 25% less than the consumer would have received in the absence of the Program.

- The government implemented a number of measures to reduce consumer invoices, including: 1) requiring the OEB to lower time-of-use prices through regulation (electricity rates), 2) moving the funding for electricity support programs to the tax base, and 3) providing an 8% rebate equivalent to the provincial portion of the HST.

- As a result of these measures, a typical consumer now receives a monthly bill of $121, which is 25% lower than the $162 bill that the consumer would have received absent the program.

2) **The affordability claim does not contravene section 1(b) of the Code since it is properly qualified and does not omit relevant information about long term costs.**

- Contrary to the complaint, the representation in issue actually states: "Recent changes have made electricity bills more affordable. By this summer, household electricity bills will be an average of 25% less, <u>and electricity rates won't increase beyond the rate of inflation for four years</u>." The time limitation for the affordability claim is clear: rate increases will be held to inflation for four years.

- The Government is not under any obligation to include in its advertising what might happen after four years, just like any other advertiser that advertises new, lower prices on a product or service. The advertiser is free to choose whether to subsidize the lower prices from current or future revenues and is under no obligation to disclose this to the public.

- Furthermore, the Government has taken additional steps to reduce electricity bills in the short term and system costs in the long term by implementing programs to support farms, businesses and consumers on First Nations reserves, implementing more competitive procurement programs and deferring new construction of electricity generation infrastructure, and enhancing the efficiency of the electricity market.

3) **The reliability claim is supported by competent and reliable evidence and thus does not contravene section 1(e) of the Code.**

- Since 2003, approximately $70 billion has been invested in clean generation, conservation and improving Ontario's transmission and distribution grid. As a result:

    - The province experienced a net growth in electricity supply: over six gigawatts (GW) of installed coal-fired capacity was shut down and replaced with more than 14 GW of renewable, natural gas fired, nuclear and demand response resources.

    - Only four appeals have been issued by the system operator in the last ten years to reduce power consumption on hot days due to supply shortages, and they all occurred over four days and were localized to the GTA due to outages caused by severe flooding.

We elaborate on these points in the remainder of this submission.

B. DISCUSSION

Preliminary Issue: The 25% reduction claim and the affordability claim are non-reviewable complaints under the Procedure.

Under the Procedure, the "Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that: the advertising, or such part of the advertising to which the complaint refers … has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government." Although the Procedure does not define the term "Canadian Government", we understand that the ASC's position is that the provision is intended to apply to situations where the advertisement has been authorized by a government entity and thus could not, under law, be found to be false or materially misleading.

The Ministry's view is that the ASC should declare that the complaint is non-reviewable since the claims in issue have been specifically authorized by regulations promulgated by the Lieutenant Governor in Council ("**LGIC**") comprised of elected representatives of the people of Ontario.[2]

By way of background, on June 1, 2017, Bill 132 (the Act) received Royal Assent and entered into force. Section 7 of the Act requires that the Board take measures to ensure that typical consumers receive an invoice that is 25% less than the consumer would have received in the absence of the Program. Section 11 of the Act authorizes the LGIC to make regulations that set out the applicable methodologies for reducing a consumer's bill.

Ontario Regulation 195/17: *Fair Adjustment under Part II of the Act* ("**Fair Adjustment Regulation**") explains how the reduction in the invoiced amount is to be achieved. Section 3 of the Fair Adjustment Regulation requires that the total invoice paid by a typical consumer must be 25% lower than the invoice would have been absent the adjustment by the Board.

> **Regulated rate consumers, first fair adjustment under s. 7 of the Act**
>
> 3. For the purposes of section 7 of the Act, the Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the electricity included in Total Invoice Amount B, result in Total Invoice Amount B being 25 per cent less than Total Invoice Amount A.

In a separate regulation, Ontario Regulation 196/17: *Invoicing Requirements* ("**Invoicing Requirements Regulation**"), the LGIC specifically mandated the use of certain statements on electricity bills. Section 1 of the Invoicing Regulation states that invoices must include the following statement:

> *"Ontario's Fair Hydro Plan substantially lowers electricity bills for typical residential consumers. This includes the eight per cent rebate introduced in January 2017, and builds on previous initiatives to deliver broad-based relief on all electricity bills."*

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[2] See Ontario, Backgrounder: The Lieutenant Governor's Roles, online: https://news.ontario.ca/opo/en/2014/09/the-lieutenant-governors-roles.html.

Section 2 requires that paper invoices must include bill inserts that feature the following statements in reasonably prominent locations on the face of the bill insert: "Ontario's Fair Hydro Plan" and "Bringing electricity bills down". Moreover, the insert must contain the following wording:

> *Ontario's Fair Hydro Plan*
>
> *Electricity bills will be lowered by 25 per cent on average for residential consumers*
>
> *Rate increases will be held to inflation for four years*
>
> *As many as half a million small businesses and farms will also benefit from this reduction*
>
> *Lower-income Ontarians and those living in eligible rural communities will receive even greater reductions, as much as a 40 to 50 per cent cut*
>
> *The benefit will vary for individual consumers depending on electricity usage and service territory. These measures include the eight per cent rebate introduced in January 2017 and build on previous initiatives to deliver broad-based relief on all electricity bills.*
>
> *To find out more, visit ontario.ca/FairHydroPlan.*

Electricity suppliers must include these bill inserts at least once every quarter in the case of specified consumers billed on a monthly basis or twice during the period in the case of consumers billed on a seasonal basis. The Minister can authorize electricity suppliers to use different wording if the supplier cannot incorporate the above-noted language onto its invoices.

In essence, the very claims that are at the subject of the complaints before the ASC have been specifically authorized by the LGIC. If electricity suppliers are required by law to make the 25% reduction claim and the affordability claim, then surely the Ministry and other agencies of the Government of Ontario can make the same claims free of scrutiny from the ASC, the Competition Bureau or the courts.

On this basis, the Ministry asks that the ASC declare the 25% reduction claim and the affordability claim "non-reviewable" complaints.

Issue 1: The 25% reduction claim is accurate and does not contravene section 1(a) of the Code.

The Board implemented the following measures to reduce invoiced amounts to residential consumers by 25%:

- A portion of the fixed costs of running Ontario's power generation fleet and conservation programs were refinanced over a longer term. This accounted for a 15% reduction to the Electricity line on hydro bills. To achieve the reductions for consumers, the Board lowered the time-of-use prices per kilowatt hour (kWh) effective July 1, 2017.

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- The Board shifted the costs associated with social support programs such as the Ontario Electricity Support Program and the Rural or Remote Protection Program from rate payers to the general revenue fund, resulting in a 2% reduction.

- The Government issued an 8% rebate for the provincial portion of the HST.

The Board determined that the rates effective July 1, 2017 under the Program resulted in a typical monthly bill of $121, which is 25% lower than the $162 bill the consumer would have received absent the program.[3]

Issue 2: The affordability claim does not contravene section 1(b) of the Code since it is properly qualified and does not omit relevant information about long term costs.

Contrary to the complaint, the representation in issue actually states: "Recent changes have made electricity bills more affordable. By this summer, household electricity bills will be an average of 25% less, and electricity rates won't increase beyond the rate of inflation for four years." The time limitation for the affordability claim is clear: rate increases will be held to inflation for four years.

The Ministry is not under any obligation to include in its advertising what might happen after four years, just like any other advertiser that advertises new, lower prices on a product or service. The Government is free to choose whether to subsidize the lower prices from current or future revenues and is under no obligation to disclose this to the public.

The 30-second radio advertisements directed consumers to the ontario.ca/fairhydroplan website where they could learn more about the Program. The website makes it clear that after four years, prices could increase, although the Government also indicates on the website that it will find opportunities to reduce costs to address affordability issues in the long term.

In addition to the 25% reduction in the typical bill, the Government has also taken steps to reduce electricity bills in the short term and system costs in the long term.

- The Government implemented additional programs to reduce the invoiced amounts for farms and businesses as well as increased support – as much as 30 to 40% – for rural and remote customers. On-reserve First Nations consumers and vulnerable Ontarians are benefiting from even greater reductions.

- As a result of the Government annual price reviews, revised procurement totals, and the introduction of competitive procurement for large renewable projects, the Feed-in-Tariff, microFIT and Large Renewable Procurement initiatives are expected to cost at least $3 billion less than forecast in the 2013 LTEP. Also, the Government renegotiated the Green Energy Investment Agreement reducing costs by $3.7 billion and deferred the construction of new nuclear units to reduce system costs, avoiding an estimated $15 billion in new construction costs.

- The Government has released an updated Long-Term Energy Plan (LTEP). The 2017 LTEP is focused on continuing to take additional costs out of the electricity system. For

[3] A "proxy" or "typical" consumer uses 750 kWh of electricity per month and has a typical time-of-use profile.

example, the Independent Electricity System Operator's ("**IESO**") Market Renewal initiative will result in meeting future system needs at the lowest cost by creating a more efficient marketplace with competitive and transparent mechanisms. This is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term.

Issue 3: The reliability claim is supported by competent and reliable evidence, and thus does not contravene section 1(e) of the Code.

Since 2003, approximately $70 billion has been invested in clean generation, conservation and improving Ontario's transmission and distribution grid. The diversity of the current supply mix insulates Ontario against sudden changes in cost or availability of any one source, and is one of the greatest strengths of Ontario's electricity system. Those investments have resulted in:

- **Net growth of electricity supply**: According to the IESO, between 2005 and 2015, the province saw a net growth in electricity supply: over six GW of installed coal-fired capacity was shut down and replaced with more than 14 GW of renewable, natural gas fired, nuclear and demand response resources.[4] The addition of new natural gas supply supports reliability in Northern and rural communities. According to the IESO, Ontario's electricity system is reliable: "The outlook for the reliability of Ontario's electricity system remains positive for the next 18 months, with adequate domestic generation and transmission to supply Ontario's demand under normal weather conditions."[5] From 2002-2007, the IESO (and its predecessor the Independent Market Operator or IMO) issued numerous public appeals to Ontarians to reduce power consumption on hot days due to supply shortages. Only four appeals have been issued in the last ten years and they all occurred over four days and were localized to the GTA due to outages caused by severe flooding.

Ontario's generation is clearly more reliable today as a result of these significant investments.[6]

C. NEXT STEPS

The Ministry would appreciate receiving the ASC's feedback as soon as possible in order to come to a satisfactory resolution of this matter. Due to the nature of the ads and the advertiser, we would also appreciate the opportunity to discuss any continuing concerns that the ASC may have in respect of the advertising before any further steps are taken to refer this matter to the Standards Council.

Commented [vdVJ(3]: Is it worth reiterating here that the ads under review are now out of market and that there are no further plans to run these advertisements again.

[4] See *Ontario Planning Outlook*, *ibid.*, p. 2.

[5] See IESO, *18-Month Outlook, An assessment of the reliability and operability of the Ontario electricity system* (September 21, 2017), p. ii, online: http://www.ieso.ca/-/media/files/ieso/document-library/planning-forecasts/18-month-outlook/18monthoutlook_2017sep.pdf?la=en.

[6] See also, Ontario Energy Report, Q2 2017, online: http://www.ontarioenergyreport.ca/pdfs/6127_IESO_OERQ22017_Electricity_EN_FA.pdf.

Thank you again for your consideration of our submission.

Yours very truly,

Joshua A. Krane

c. Sam Lyon, *Ministry of Energy*
Laurie Sloan, *Advertising Review Board*
Alena Thouin, *Legal Services Branch*