FW: National Steel Car Limited vs IESO and Minister of Energy

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Attachments: National Steel Car Ltd v IESO and ON - N of App Aug 1 2017.pdf (1.75 MB)

MOECC was served with an NCQ alleging that the global adjustment charged to electricity consumers is an unconstitutional tax. More information is provided below and in the attached Notice of Application. CLB is reviewing the entire package (which is over 900 pages) and will provide a BN seeking instructions next week. The applicant is National Steel Car Limited.

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The Applicant seeks a declaration that revenues, or some portion of the revenues, collected from the Applicant by the Independent Electricity System Operator (IESO)for the Global Adjustment is an unconstitutional tax.

The Applicant argues that the Government introduced the Feed-in-Tariff (FIT) program to enter into contracts for the generation of electricity from renewable energy sources. The Applicant alleges that the FIT program, and the policy goals of the government in enacting the FIT program (including providing economic support to rural and aboriginal communities) are funded by the electricity ratepayers of Ontario through the Global Adjustment implemented by the IESO under the authority of the Electricity Act. The Applicant alleges that because the FIT program pays generators of renewable energy at rates in excess of market rates, the behaviour of electricity consumers who pay for the initiatives is not affected, and that the Global Adjustment does not promote the conservation of electricity.

In essence, the Applicant is arguing that the revenues raised through the Global Adjustment are being used for general public purposes, and not to defray the costs of a regulatory scheme. The Applicant argues that this turns the Global Adjustment (or at least some portion of it) into a tax that has not been authorized. The Applicant also alleges that the Global Adjustment unfairly impacts residential consumers, and that if it is a tax, it is indirect (and therefore unconstitutional under the division of powers) and unauthorized by the Taxpayer Protection Act.

The Notice of Application does not identify a return date, and also indicates that one more affidavit needs to be filed. The next steps will be to file a Notice of Appearance on behalf of the government, review the record, and discuss with counsel a potential timetable for the litigation of the application.

Happy to discuss further,

Mike