Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Joshua A. Krane
Partner
Dir: 416-863-4187
joshua.krane@blakes.com

January 17, 2018

Reference: 14229/1

VIA E-MAIL
CONFIDENTIAL

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

Dear Rafe:

Twitter Matter

Further to your email of January 4, 2018, we are writing to respond to the issues you raised concerning a complaint received by Ad Standards on December 28, 2017 with respect to a tweet from Premier Kathleen Wynne highlighting the government's policy decision to reduce electricity bills by 25%.

The suggestion in your email that the Ministry breached its commitment to Ad Standards is very concerning to my client and it strongly opposes this view. It is our view that the Premier's tweet was not part of the advertising campaign in issue. The complainant acknowledges this. It remains the case that the Ministry has not revived the advertising campaign.

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

1. The Premier's Tweet is not an Extension of the Fair Hydro Plan Campaign

The measures taken to reduce Ontarians' electricity bills by 25% on average under the Fair Hydro Plan is government policy. On March 2, 2017, the Office of the Premier released a news release indicating that the government would take measures to lower electricity bills by 25% on average for all residential customers.[1] On May 11, 2017, the Minister of Energy introduced the *Fair Hydro Act, 2017* to direct the

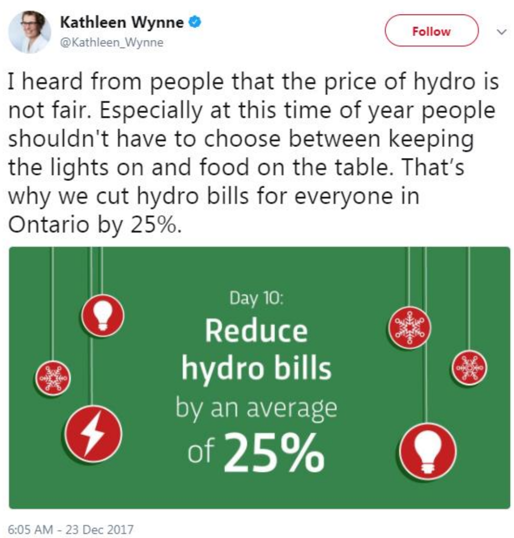
[1] See Ontario, Office of the Premier, "Ontario Cutting Electricity Bills by 25 Per Cent" (March 2, 2017), online: https://news.ontario.ca/opo/en/2017/03/ontario-cutting-electricity-bills-by-25-per-cent.html:

> Ontario is lowering electricity bills by 25 per cent on average for all residential customers as part of a significant system restructuring that will address long-standing policy challenges and ensure greater fairness.
>
> Starting this summer, Ontario's Fair Hydro Plan would provide households with this 25 per cent break.

Ontario Energy Board to implement the reduction (see Appendix).[2] On May 31, 2017, the Legislature passed the *Fair Hydro Act, 2017*.[3] On June 22, 2017, the Ontario Energy Board announced how bills would be reduced by an average of 25% as of July 1, 2017.[4] The Premier has reiterated in the Legislature how the Fair Hydro Plan has resulted in an average 25% cut to residential ratepayers' invoices.[5]

The Premier's tweet, which is reproduced below, is an unpaid communication regarding government policy. Twitter, like a news release, is a modern form of communicating government policy to the public.

Figure 1 – Tweet of Premier Kathleen Wynne (December 23, 2017, 6:05 am)



[2] See Ontario, Ministry of Energy, "Ontario Cutting Electricity Bulls by 25 Per Cent" (May 11, 2017), online: https://news.ontario.ca/mei/en/2017/05/ontario-cutting-electricity-bills-by-25-per-cent.html.

[3] See Ontario, Ministry of Energy, "Ontario Passes Legislation to Lower Electricity Bills by 25 Per Cent" (May 31, 2017), online: https://news.ontario.ca/mei/en/2017/05/ontario-passes-legislation-to-lower-electricity-bills-by-25-per-cent.html: "Ontario passed legislation today that will lower electricity bills by 25 per cent on average for all residential customers to provide significant rate relief and ensure greater fairness."

[4] See Ontario, Ontario Energy Board, "Electricity prices are dropping again on July 1" (June 22, 2017), online: https://www.oeb.ca/newsroom/2017/electricity-prices-are-dropping-again-july-1:

> For residential and small business customers that buy their electricity from their utility, the OEB has set new lower Regulated Price Plan (RPP) electricity prices that build on the reduction in RPP prices that came into effect on May 1. With the new RPP prices that will start to apply on July 1, the total bill for the proxy customer described under the Fair Hydro Act, 2017 will be about $121. That is about $41 or 25% lower than it would have been without the following mitigation.

[5] Ontario, Legislative Assembly, Official Report of Debates (Hansard), 41st Parl, 2nd Sess, No 106 (October 18, 2017) at 5709 (Hon. Kathleen O. Wynne).

The policy being expressed in this communication is the reduction in electricity bills by 25%. This is a policy being promoted to the electorate by the Premier.

It would be inconsistent with the Code for Ad Standards or a Standards Council to treat communications from the Premier expressing a policy choice as reviewable. The Code includes an express exclusion for communications regarding government policy. It is not intended for a Standards Council to review communications between elected representatives and their constituents on matters of public policy, as is plain in the text of the Code.

2. The Ministry has not Breached its Commitment to Ad Standards

The advertising in question, namely the radio advertising referenced in the three complaints, was discontinued. The Premier's tweet was not part of the advertising campaign in issue. The complainant acknowledges this in its complaint. It remains the case that the Ministry has not revived the same advertising campaign.

* * * * *

Yours very truly,

Joshua A. Krane

c. Maud Murray and Alena Thouin, *Legal Services Branch*

Appendix – How the Board Achieved a 25% Reduction

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.

- 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.

Blake, Cassels & Graydon LLP
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Patent & Trade-mark Agents
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Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Joshua A. Krane
Partner
Dir: 416-863-4187
joshua.krane@blakes.com

October 31, 2017

Reference: 14229/1

VIA E-MAIL
CONFIDENTIAL

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

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 advertising.

A. SUMMARY OF THE ISSUES

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**").

As a preliminary matter, the Ministry's position is that the 25% reduction claim and affordability claim – 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 Plan 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. On this basis, the claims are not reviewable and the Ministry submits that the ASC should cease its review of the complaints.

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

Even if all three claims were reviewable, none of these claims contravenes the *Canadian Code of Advertising Standards*. In brief, and as discussed in more detail below:

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 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 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 complaints are non-reviewable since the claims in issue have been specifically authorized by regulations made by the Lieutenant Governor in Council ("**LGIC**").[2]

By way of background, on June 1, 2017, 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

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

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."*

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.

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.

- 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 prices will be held to inflation for four years and that the cost of refinancing will be recovered from ratepayers in later years. The Government also indicates on the website that it will find opportunities to reduce costs to address affordability issues in the long term.

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

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 Long-Term Energy Plan ("**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 the 2017 LTEP, which is focused on continuing to take additional costs out of the electricity system. For 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

[4] See IESO, Ontario Planning Outlook: A technical report on the electricity system prepared by the IESO (September 1, 2016), p. 2, online: http://www.ieso.ca/-/media/files/ieso/document-library/publications/serving-ontarios-electricity-consumers.pdf?la=en.

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.

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*
Maud Murray, *Legal Services Branch*

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

STRICTLY CONFIDENTIAL & PRIVILEGED

November 13, 2017

Mr. Joshua A. Krane
Blake, Cassels & Graydon LLP
Barristers & Solicitors
199 Bay Street
Suite 4000
Toronto, ON
M5L 1A9

Re: Ontario Ministry of Energy's *Fair Hydro Plan*

Dear Mr. Krane,

When Ad Standards receives advertising-related complaints from consumers, such as the consumer complaints about recent advertising by the Ontario Ministry of Energy (MOE) concerning the Ontario government's *Fair Hydro Plan*, Ad Standards tests the advertising by asking the following questions before sending the complaints to Council for its adjudication,:

1. Is this an "advertisement" as defined in the *Canadian Code of Advertising Standards (Code)*?

2. If "yes", is this particular advertising exempted from review under any provision of the *Code*?

3. If "no", does Ad Standards believe a *prima facie* case has been made concerning this complaint and advertising such that a Council of Ad Standards could reasonably conclude the advertising in question contravenes one or more provisions of the *Code*?

Preliminary Matter:

After applying this multi-step test to the complaints from consumers about Ontario's *Fair Hydro Plan* advertising, this is where Ad Standards nets out on the advertising in question, and the submissions to Ad Standards made in your October 31, 2017 brief made on behalf of the MOE.

i. The material and claims under review qualifies, in the opinion of Ad Standards, as "advertising" as defined in the *Code*. (See the Definitions Section of the *Code.*)

ii. Ad Standards is also of the opinion that this advertising qualifies as "Government advertising" and, as such, is reviewable under the *Code*. (See "Application" Section of the *Code*.)

iii. Furthermore, Ad Standards is of the opinion that the advertising about which the complaints were made to Ad Standards has not "been specifically approved by an agency (or some other comparable entity) of the Canadian government."

iv. In other words, Ad Standards disagrees with your written submission of October 31st in which you argued that the making of the contested advertising (viewed as a whole as distinct from several statements made within the advertising) has "been specifically authorized" under the Ontario Fair Hydro Plan Act, 2017 (the "Act"). On that basis, Ad Standards does not agree that it is or should be required to cease its review.

Ad Standards understands that under Ontario Regulation 196/17, invoices to hydro consumers must include certain prescribed statements; and that, with regulated frequency, these invoices must include inserts on which prescribed statements must be prominently made about certain benefits the government claims the *Fair Hydro Plan* delivers*.*

Ad Standards would never, and does not now, contest the government's right or authority to legislate exact language that must be used in communicating with the public. Nor would Ad Standards ever, and does not now, propose that its *Code* takes primacy over the exact language the government might legislate be used in its communications through advertising or otherwise.

However, without altering the exact language the government has said <u>must</u> be included in hydro invoices to its customers, and in other hydro-related *communiqués* to the public, the issue in this case is whether the 'advertising' (which is the limit of Ad Standards' purview) when viewed as a whole may communicate impressions that a Standards Council, acting not unreasonably, believes contravenes the *Code.*

The function of Council is to adjudicate complaints by consumers. The responsibility of Ad Standards in issues related to consumer complaints is to determine if the complaints raise a *prima facie* case of *Code* contravention based strictly on the *Code* and its provisions.

Council would not be entitled or authorized to conclude that the language prescribed by legislation needs to be changed. Council is perfectly competent to conclude, however, that the general impression likely to be conveyed by advertising is misleading or otherwise in contravention of the *Code*; and, without proposing changes to the prescribed language, that the advertisement(s) need to correct that impression. Unless, of course, the Ministry responsible for the advertising decides to amend the mandated language.

These are legitimate issues and questions for Council to work on and deliberate over, the outcome of which Ad Standards has, and exercises, no authority to predetermine.

It needs repeating that, in matters involving questions of "accuracy and clarity" in advertising, the primary concern in the *Code* is not with the intent of the sender (of the advertising claim, representation or message). Nor is it with the precise legality of the presentation. Rather the focus is on the message, claim or representation as received or perceived, i.e. on the general impression conveyed by the advertisement.

As you know, Ad Standards has applied this fundamental principle to advertising about which a Ministry of the Ontario government has imposed a requirement to disclose a set of prescribed facts that, when disclosed, are lengthy and complicated to understand. We refer to price advertising of motor vehicles in Ontario, regardless of the advertising medium that is used. This legislation has not prevented a Council from reviewing the complained-of advertising under the *Code* when, allegedly, the television advertising was unreadable (the font used in the disclaimer was too small and on-screen too briefly); and the details could not be understood by readers or viewers of the advertising, contrary to the *Code.*

Issue One: The "25% Reduction" Claim
Ad Standards does not, at this time, take issue with the "25% reduction" claim made in the advertising which, Ad Standards understands, is this: electricity bills to hydro's customers will be lowered, on average, by 25% effective now; and, for the next four years, any increases to these reduced rates will not exceed the annual rate of inflation.

On that basis, Ad Standards would not ask Council to adjudicate on the merits of the complaints about "issue one".

Please confirm that Ad Standards' understanding correctly states the facts represented in issue one.

Issue Two: The "Affordability" Claim
Ad Standards does not subscribe to the analogy you made in your submission between the Ministry's obligation to make fair and reasonable disclosures in its advertising, and the obligation of what you termed "other advertiser(s)" who "advertise new, lower prices on a product or service".

The strongest distinguishing feature between these two categories of advertisers is this: conventional advertisers only receive revenue sourced from consumers when they purchase the advertised product and services. Conventional advertisers cannot tax their customers, indirectly or directly, as governments can, for additional revenue to make up any shortfall in the actual cost of what's being sold by the advertiser and purchased by the consumer.

While the Ministry's advertising in this case may be literally true, it falls short of informing its customers, who are also citizens and taxpayers, that the consequence of the short term (four year) gain from reduced hydro bills by all odds will result in longer term financial pain, as has been argued by critics of the program.

We make no suggestion in this memo as to how this part of the Ministry's message may be acceptably balanced. However, before deciding to ask Council to consider this issue, we would be pleased to discuss the options with you.

In your submission you wrote that 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. It is our view that a better analogy would have been to say, for example, that Loblaw or Metro does not have to advertise that it will make up for its loss-leader price advertising after the loss-leader program expires by charging an amount per product or service that is equal to the losses experienced during the price reduction program. In the conventional commercial scenario, the customer is free to decide whether it wants to continue buying from Loblaw or Metro at the higher price (assuming Loblaw or Metro does not have a monopoly). But in the case of hydro, consumers do not have the luxury of a competitive market. Consumers cannot find a different supplier of hydro. Consumers cannot withdraw or decline from paying the higher taxes and rates that inevitably will follow in four or more years after the *Ontario Fair Hydro Plan* expires.

Issue Three: The "Reliability" Claim
You acknowledged in your written submission that the reliability claim and language was not subject to the *Ontario Fair Hydro Act* or Regulations made thereunder.

Both a casual as well as more careful reading of the arguments you made in support of the reliability claim seem, to Ad Standards, to boil down to the statement that the Ministry has competent and reliable evidence that the claim is true. You referenced the significant investment that has been made since 2003 in "clean generation" (which is not a reliability issue); in "conservation" (which is not necessarily a reliability issue); and in "improving Ontario's transmission and distribution" (which may or may not be a reliability issue).

But where is the <u>evidence</u> that the system is more reliable now and everywhere: in Ontario's rural and northern communities as well as to conventional, residential consumers?

The language of issue three in the now-suspended advertising is categorical and unconditional: "Upgrades to our electrical system…<u>have</u> made it more reliable (impliedly more reliable than "ever before")…for all Ontarians." To complainants who personally have experienced outages, this reliability claim may not ring true, as evidenced by a complainant in this case.

Ad Standards invites the Ministry to consider and discuss with us how the Ministry may be able to advertise "reliability" without provoking the negative response from disbelievers based on their actual, personal experiences.

On a final note, it needs repeating that if Council were eventually asked to adjudicate any one or more of the three issues, and if as a result one or more complaints were upheld by Council, the *Code* provides that, in cases where the advertising and/or claims in question were withdrawn prior to Council's adjudication and not reinstated as such, Ad Standards will take care that the advertiser is not identified or identifiable in the report on Council's decisions that are periodically published on Ad Standards' website.

Yours sincerely,

Ad Standards
Per:

R.S. Engle
Legal Counsel to Ad Standards
/dce

Copy by email to: Janet Feasby
Vice President, Standards
Ad Standards

AT CHELSEA CT., 26 SUSSEX AVENUE, TORONTO, CANADA M5S 1J7
Tel: 416-598-3806 Fax: 416-598-1786 email: counsel@rsengle.ca
R.S. ENGLE PROFESSIONAL CORPORATION