Fw: GA Financing Legal Advice

From:	"Imbrogno, Serge (ENERGY)" <"/o=govon/ou=ontario public sector - iserv ems/cn=recipients/cn=imbrognose">
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Date:	Mon, 13 Feb 2017 08:51:29 -0500
Attachments:	20+10 Scenario.pptx (76.29 kB); ATT00001.htm (142 bytes); Rate Mitigation Plan Options_Feb 9 version _1230.pptx (1.47 MB); ATT00002.htm (131 bytes)

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>
Sent: Sunday, February 12, 2017 6:02 PM
To: Imbrogno, Serge (ENERGY); Hume, Steen (ENERGY); Nelms, Scott (ENERGY); Katona, Keley (ENERGY)
Cc: Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: GA Financing Legal Advice

Confidential/Solicitor-Client Privileged

We received the MAG approved legal advice about the constitutionality of the GA option based on the Feb. 9 deck (attached).

In summary:

Based on our understanding of the February 9, 2017 proposal, it creates a refinancing structure which results in future consumers paying disproportionately more of the GA cost and therefore cross-subsidizing near-term consumers. This means that it is at a moderately high constitutional risk of resulting in an unconstitutional tax.

If, however, future consumers who cause the need for and benefit from this future capacity would share proportionately in the cost of financing the required assets, the proposal would pose only a low constitutional risk.

The lowest risk approach to financing the GA would be to spread the costs of the assets financed by the GA over their useful life expectancy, so that ratepayers today and in the future share proportionately in the costs of the assets from which they benefit and cause the need for. Normal accounting rules can be used for dealing with financing costs and the change in the future value of money. The accounting based on the value and useful life expectancy of the assets comprising the GA would determine how much can be reasonably removed from the current GA and the period in which it should be recovered.

MAG pointed out that the deck that they saw makes no connection between the life of the assets that the GA pays for and the GA refinancing term. Although we have been solving for numbers, the legal risk is mitigated when our products include the narrative around the useful life of assets and inter-generational fairness. If ever challenged, we would need evidence to back up that narrative.

MAG also noted that the legal risk profile shifts depending on the term and quantum of the debt and the life expectancy of the assets that the debt is associated with so as the details our plans become more certain, we should re-engage MAG for additional consideration.

Carolyn