RE: OFHP Bill Presentment- Updated Risk Language for CBN

From: "Imbrogno, Serge (ENERGY)" <"/o=govon/ou=ontario public sector - iserv ems/cn=recipients/cn=imbrognose">
To: "Chatterjee, Jeet (ENERGY)" <jeet.chatterjee@ontario.ca>
Cc: "Schlaepfer, Martin (ENERGY)" <martin.schlaepfer@ontario.ca>
Date: Mon, 11 Dec 2017 22:01:34 -0500

Ok. Thanks

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From: Chatterjee, Jeet (ENERGY) <Jeet.Chatterjee@ontario.ca>
Date: Monday, Dec 11, 2017, 9:57 PM
To: Imbrogno, Serge (ENERGY) <Serge.Imbrogno@ontario.ca>
Cc: Schlaepfer, Martin (ENERGY) <Martin.Schlaepfer@ontario.ca>
Subject: Fw: OFHP Bill Presentment- Updated Risk Language for CBN

Deputy,

CO wished to update their Cabinet note to flag the legal risk identified today. Staff have made the following edit to the language CO sent over.

OK to share with MO?

"*Legal Risk*
The current proposal does not change the legal risks associated with the inclusion of OFHP messaging on consumer's electricity bills, but a constitutional law risk that was not previously outlined has been identified. The Ministry of the Attorney General has advised that there is a moderately-high risk that government requiring LDCs and USMPs (utilities) to convey this information in this way could be successfully argued to constitute an infringement on the utilities' freedom of expression under the Canadian Charter of Rights and Freedoms. As noted, ENERGY has been working with utilities on the proposal through its formal Working Group and advises that the risk of a utility bringing a case of this nature forward is low. Hydro One has already been providing this language to its customers and has received positive feedback to date; as such the Ministry has LDC buy-in to provide this messaging. The use of Regulation is not just to enforce compliance but also to establish a consistent methodology for calculating savings so that all Ontario consumers receive the same information.~~ [ENERGY will work with MAG to explore possible language options that could mitigate this risk through future regulatory amendment, as appropriate].~~"