

RE: Urgent Fact Check

From: "Katona, Keley (ENERGY)" <keley.katona@ontario.ca>
To: "Teliszewsky, Andrew (ENERGY)" <andrew.teliszewsky@ontario.ca>
Cc: "Imbrogno, Serge (ENERGY)" <serge.imbrogno@ontario.ca>
Date: Wed, 21 Dec 2016 16:47:03 -0500

Below from LSB...

We are not aware of a precedent for a government action that would essentially overturn the OEB's decision.

One circumstance of which we are aware that we would flag for you. In 2009, the OEB released a decision and order authorizing landlords to install smart sub-metering systems in residential complexes, and imposing certain conditions before the systems can be used for billing purposes. The Decision and Order acknowledged the publicly stated intention of the government to introduce legislation dealing with these matters, and specifically stated that the Decision and Order was intended to be an interim measure until such legislation was passed. The Energy Consumer Protection Act was subsequently introduced, along with a regulation (389/10 under the ECPA) that included detailed suite metering provisions. The suite metering provisions in the regulation were different in a number of respects from the requirements set out in the Decision and Order, effectively overriding the Decision and Order. However, I would distinguish this circumstance on the basis that the OEB's decision acknowledged the government's public intention to introduce legislation. Our case is different because the government has acknowledged the authority of the OEB on this issue.

From: Teliszewsky, Andrew (ENERGY)
Sent: December-21-16 11:38 AM
To: Katona, Keley (ENERGY)
Cc: Imbrogno, Serge (ENERGY)
Subject: Re: Urgent Fact Check

Good Morning:

Thank you for this fact check; and please extend gratitude to LSB for turning this around so quickly.

One more question - any precedent for the kind of action / question of the day, please?

Many thanks, in advance.

Andrew Teliszewsky
416-327-3550

From: Katona, Keley (ENERGY)
Sent: Wednesday, December 21, 2016 10:36 AM
To: Teliszewsky, Andrew (ENERGY)
Cc: Imbrogno, Serge (ENERGY)
Subject: FW: Urgent Fact Check

Hi Andrew,
See below.
Keley

New legislation would provide the clearest authority with the lowest legal risk. The Minister might be able to issue a directive under s. 27.1 re: conservation/energy efficiency/cleaner energy sources, but the Board could determine that it needs to hold a hearing to determine how to implement such a directive and there is a possibility that someone would bring an application for judicial review of the Minister's decision. This sort of directive gives rise to administrative law risk in that a court could determine that it is beyond the Minister's authority to attempt to "overrule" the Board's determination about bill presentation made following the Board's due process.

We considered the Minister's authority to issue directives under 27(1) and determined it could not be used here - this isn't a "general policy objective". We also considered the Minister's authority under s. 28.7 regarding gas marketing but it too is inappropriate.

- The Ontario Energy Board Act gives specific authority of the Board to make rules "relating to any in respect of invoices issued in respect of gas to consumers, including meeting such requirements as may be provided for by the Board or being in a form approved by the Board" (s. 44(1)(b.3))
- Minister may issue and Board shall implement policy directives concerning "general policy objectives to be pursued by the board" (s. 27(1))
 - LGIC must approve – OIC required
 - At issue here is not a directive regarding "a general policy objective" – this is a specific issue related to the presentation of a specific cost.
 - This authority is not appropriate to use.
 - Board could also determine a hearing is required.
- Minister may issue and Board shall implement directives that require the Board to take steps specified to "promote energy conservation, energy efficiency or the use of cleaner energy sources" (s. 27.1(1))
 - LGIC must approve – OIC required
 - The Board would have to consider whether it is required to hold a hearing, given its determination around billing presentation followed a process of consultation.
 - This option is vulnerable to legal challenge
 - The Board specifically determined:
 - For the vast majority of customers, a separate line item will not provide any form of meaningful price signal. Customers other than voluntary participants cannot avoid the Cap and Trade Program related costs which will be borne by the Utility and allocated to them. Costs associated with Cap and Trade Program compliance are part of the Utilities' cost of providing natural gas service similar to other delivery costs. In the OEB's view the most important driver of

consumer behaviour is total price.

- The Board's determination in this regard is directly contrary to the rationale that we would need to provide in making the directive.
- Minister may issue and Board shall implement directives in relation to the marketing of gas (s. 28.7(1))
 - These directives may require Board to take steps specified to promote fairness, efficiency and transparency in the retail market for gas...or in respect of any activity associated with the marketing of gas
 - These directive may require Board to amend licenses in respect of gas marketers
 - LGIC must approve – OIC required
 - These sections were not intended to address invoicing/billing and could not be used for this purpose.

From: Teliszewsky, Andrew (ENERGY)

Sent: December-21-16 7:39 AM

To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Imbrogno, Serge (ENERGY); Hume, Steen (ENERGY)

Cc: Katona, Keley (ENERGY)

Subject: Urgent Fact Check

Importance: High

Hi.

RE: OEB Natural Gas / Cap and Trade Compliance on Bills

IF Government wanted to reverse the Ontario Energy Board ("the Board") ruling regarding compliance charges on Natural Gas Bills and allow for a separate line item – it would be at least S.27 OIC / Cabinet Level Direction.

Not any authority for the Minister of Energy to "issue a directive or letter of instruction" of some description to the Board?

Fact check : At least OIC. Perhaps Legislation required?

IF possible, before 08h00 please.

Atel/

Andrew Teliszewsky

Chief of Staff | Office of Hon. Glenn Thibeault

Ministry of Energy

andrew.teliszewsky@ontario.ca

416-327-3550 (o)

416-436-6370 (m)