

RE: OFHP Bill Presentment- Updated Risk Language for CBN

From: "Hindmarch-Watson, Tim (CAB)" <tim.hindmarch-watson2@ontario.ca>
To: "Moore, Karen (CAB)" <karen.moore4@ontario.ca>
Date: Tue, 12 Dec 2017 10:04:08 -0500

I tweaked what they sent a little for your review. I am confirming the November 29 date as I understood this was it. We should likely send this to MAG too:

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 and ENERGY advises it has LDC buy-in to provide this messaging. Hydro One has already been providing dynamic messaging to its customers since November 29 and has received positive feedback to date. The ministry advises that the 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.

Tim Hindmarch-Watson
416-325-4618

From: Chatterjee, Jeet (ENERGY)
Sent: December-12-17 9:29 AM
To: Hindmarch-Watson, Tim (CAB)
Cc: Moore, Karen (CAB); Schlaepfer, Martin (ENERGY)
Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN

Tim,

Staff edits to your legal risk language below.

"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]."~~

From: Hindmarch-Watson, Tim (CAB)
Sent: December-12-17 8:28 AM
To: Schlaepfer, Martin (ENERGY)
Cc: Chatterjee, Jeet (ENERGY); Moore, Karen (CAB)
Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN

Hi Martin:

Following up on this. Do you have a sense of timing for the ministry's fact check and comments?

Thanks

Tim Hindmarch-Watson
416-325-4618

From: Hindmarch-Watson, Tim (CAB)
Sent: December-11-17 5:03 PM
To: Schlaepfer, Martin (ENERGY)
Cc: Chatterjee, Jeet (ENERGY); Moore, Karen (CAB)
Subject: OFHP Bill Presentment- Updated Risk Language for CBN
Importance: High

Hi Martin:

I have drafted the below paragraph to address the new risk that has been flagged for inclusion of an updated CBN for Cabinet on Wed. Please review and provide any edits or suggestions ASAP. I have added a final sentence about possible work to mitigate the risk in the future, so please advise if this is part of the plan or if some other approach is proposed or recommended.

"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. **[ENERGY will work with MAG to explore possible language options that could mitigate this risk through future regulatory amendment, as appropriate]."**

Thanks,

Tim Hindmarch-Watson
Policy Advisor
Justice, Resource and Environmental Policy
Policy and Delivery Division
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416-325-4618