

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 21:09:52 -0500
Attachments: LRC-CBN_ENERGY Bills_DRAFT- v4.docx (43.81 kB)

Here you go!

Tim Hindmarch-Watson
416-325-4618

From: Moore, Karen (CAB)
Sent: December-12-17 9:09 PM
To: Hindmarch-Watson, Tim (CAB)
Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN

Could you flip me the full cbn please?

Karen
416-325-4764
karen.moore4@ontario.ca

From: Hindmarch-Watson, Tim (CAB)
Sent: December 12, 2017 8:56 PM
To: Moore, Karen (CAB) <Karen.Moore4@ontario.ca>
Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN

Sounds good. Thanks

Tim Hindmarch-Watson
416-325-4618

From: Moore, Karen (CAB)
Sent: December-12-17 8:49 PM
To: Hindmarch-Watson, Tim (CAB)
Subject: Re: OFHP Bill Presentment- Updated Risk Language for CBN

Thanks. I agree this shouldn't be litigated in our note and it is now most of the risk section at this point. I think we can trim down the text and preserve both points - will take a stab now.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Hindmarch-Watson, Tim (CAB)
Sent: Tuesday, December 12, 2017 8:36 PM
To: Moore, Karen (CAB)
Subject: FW: OFHP Bill Presentment- Updated Risk Language for CBN

Hi Karen:

Am I not certain that our note is the best place for the ministries to litigate this disagreement, but given the

timing there may not be a better option. It is also not currently clear that the other options MAG is referring to would necessarily add length or complexity in the way Energy argues as we have not seen what these options would look like. I have done my best to simplify the additional piece that Energy has provided below. Let me know if you are comfortable with this and I will add to the note and send onto folks. Thanks

The proposal does not change the legal risks associated with the inclusion of OFHP messaging on consumer's electricity bills in the existing regulation, 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 would be found to constitute an unjustified violation of the utilities' freedom of expression under the Charter. The right to freedom of expression includes the right to say nothing or to not say certain things. Therefore a law that requires persons to communicate certain things must be justified under the Charter analysis.

The risk arises because it is unclear whether the objective of advising consumers of the effect of government policy on their electricity bill when it does not directly relate to the calculation of the invoiced amount is pressing and substantial, and because there may be more neutral and specific means of communicating information to consumers regarding the impact of the Fair Hydro Plan. If more neutral and specific words were used to communicate the information in question, there would be a moderate risk that the proposed amendment would be an unjustified violation due to the uncertainty as to whether it serves a pressing and substantial purpose.

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. However, this fact does not mitigate against another person seeking public interest standing to bring a case forward. Hydro One has already been providing dynamic messaging to its customers since July 2017 and has received positive feedback to date. ENERGY advises that the regulation is not just intended to enforce compliance but also to establish a consistent methodology for calculating savings so that all Ontario consumers receive the same information. ENERGY advises that it disagrees with the assessment that adjusting the wording would necessarily reduce overall risk and have indicated that doing so may raise other policy and implementation considerations:

- The simplicity of the message is based on an increased understanding of how consumers make use of information provided on their bills. If revisions were to disassociate the savings figure from OFHP, it may raise the risk of consumer confusion, potentially leading to increased call volumes at utility call centres; and
- If a revised option added length to the message it would risk that utilities would be unable to accommodate the message on bills due to limitations within their billing systems and physical space on bills.

Tim Hindmarch-Watson
416-325-4618

From: Schlaepfer, Martin (ENERGY)
Sent: December-12-17 7:43 PM
To: Hindmarch-Watson, Tim (CAB)
Cc: Moore, Karen (CAB); Chatterjee, Jeet (ENERGY)
Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN

Hi Tim,

Attached is our revisions to this (in red below) . Our MO is still reviewing but wanted to share.

Thanks,
Martin

From: Hindmarch-Watson, Tim (CAB)
Sent: December-12-17 2:28 PM
To: Chatterjee, Jeet (ENERGY)
Cc: Moore, Karen (CAB); Schlaepfer, Martin (ENERGY)

Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN
Importance: High

Hi Jeet:

MAG provided it's fact check, which we have adapted somewhat to the below. Please provide additional feedback ASAP.

The proposal does not change the legal risks associated with the inclusion of OFHP messaging on consumer's electricity bills in the existing regulation, 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 would be found to constitute an unjustified violation of the utilities' freedom of expression under the Charter. **The right to freedom of expression includes the right to say nothing or to not say certain things.** Therefore a law that requires persons to communicate certain things must be justified under the Charter analysis.

The risk arises because it is unclear whether the objective of advising consumers of the effect of government policy on their electricity bill when it does not directly relate to the calculation of the invoiced amount is pressing and substantial, and because there may be more neutral and specific means of communicating information to consumers regarding the impact of the Fair Hydro Plan. If more neutral and specific words were used to communicate the information in question, there would be a moderate risk that the proposed amendment would be an unjustified violation due to the uncertainty as to whether it serves a pressing and substantial purpose.

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 know to provide this messaging. However, this fact does not mitigate against another person seeking public interest standing to bring a case forward. Hydro One has already been providing dynamic messaging to its customers since July 2017 and has received positive feedback to date. ENERGY advises that the regulation is not **intended** to just enforce compliance but also to establish a consistent methodology for calculating savings so that all Ontario consumers receive the same information. **ENERGY also disagrees with the assessment that adjusting the wording would reduce risk. The message as proposed – Ontario's Fair Hydro Plan saved you \$X – is a statement of fact, and as such provides information to consumers without embellishment. Adjusting the language to not reference OFHP would also raise policy and implementation concerns:**

- **The simplicity of the message is based on an increased understanding of how consumers make use of information provided on their bills, informed by behavioural research. Consumers seek straight-forward explanations of the items on their bills. Disassociating the savings figure from OFHP raises the risk of consumer confusion regarding the figure, potentially leading to increased call volumes at LDC call centres.**
- **Adding complexity and length to the message raises the risk that LDCs would run up against limitations within their billing systems and would not be able to accommodate the message.**

Thanks,

Tim Hindmarch-Watson
416-325-4618

From: Hindmarch-Watson, Tim (CAB)
Sent: December-12-17 10:25 AM
To: Chatterjee, Jeet (ENERGY)
Cc: Moore, Karen (CAB); Schlaepfer, Martin (ENERGY)
Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN

Thanks, Jeet.

I have updated the language to the below:

"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 July 2017 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."

We are sending to MAG for fact check, but can you also advise if this has been reviewed by your LSB?

Thanks

Tim Hindmarch-Watson
416-325-4618

From: Chatterjee, Jeet (ENERGY)
Sent: December-12-17 10:12 AM
To: Hindmarch-Watson, Tim (CAB)
Cc: Moore, Karen (CAB); Schlaepfer, Martin (ENERGY)
Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN

Tim,

Hydro One implemented dynamic messaging in July this year, putting it on their old bill (they were granted an exemption). In November, they released their redesigned bill which had other changes apart from dynamic messaging.

If you need more details, I'll have to chat with staff and get back to you.

Thanks,

Jeet

Jeet Chatterjee
Senior Policy Advisor, Deputy Minister's Office
Ontario Ministry of Energy
P: 416-327-7025

From: Hindmarch-Watson, Tim (CAB)
Sent: December-12-17 10:03 AM
To: Chatterjee, Jeet (ENERGY)
Cc: Moore, Karen (CAB); Schlaepfer, Martin (ENERGY)
Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN

Thanks, Jeet. Can you confirm that the Hydro One Dynamic messaging went onto bills on November 29?

Thanks!

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

Cabinet Office

416-325-4618