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MEMORANDUM

Date : December 13, 2017

To : Hon. Deborah Matthews
Chair of Cabinet

From : Mark Spakowski
Chief Legislative Counsel

Re : Proposed regulation under the *Ontario Fair Hydro Plan Act, 2017*

The Ministry of Energy is proposing a regulation to amend Ontario Regulation 196/17 (Invoicing Requirements) made under the *Ontario Fair Hydro Plan Act, 2017*. The proposed regulation was considered at the Legislation and Regulations Committee on Monday, December 11, 2017.

After the proposed regulation was sealed by our office and delivered to LRC, the Constitutional Law Branch (CLB) prepared an opinion for the Ministry. The CLB opinion indicates that the proposed regulation poses a moderately high risk of being found unconstitutional. Had our office been aware of the CLB opinion, we would not have sealed the proposed regulation.

A regulation may be made even if it is not sealed. However this is rare - to our knowledge this has not been done in at least the past decade. In the normal course, the Ministry responsible for the regulation and the Office of Legislative Counsel work together, during the drafting process, to address any concerns that might affect the sealing of the regulation.

If an unsealed regulation is made by the Lieutenant Governor in Council, it is effective in law like any other regulation, unless and until it is successfully challenged.

Mark Spakowski
Chief Legislative Counsel



cc. Irwin Glasberg, Acting Deputy Attorney General
Mark Spakowski, Chief Legislative Counsel
Sarah Wright, Acting Director, Constitutional Law Branch
Maud Murray, Legal Director, Ministry of Energy
James Rehob, Counsel, Ministry of Energy
Han Dong, MPP, Vice Chair, LRC
Lucia Frndova, Secretary, LRC