Energy reg - Reg2017.0643 - Amending O. Reg. 196/17 (Invoicing Requirements) - Sealing issue

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Date:	Wed, 13 Dec 2017 08:06:03 -0500
Attachments:	CLB Opinion on proposed Fair Hyro Plan invoicing regulations - 8 Dec 201....docx (40.24 kB); Minister Briefing on Bill Redesign_SC - SNAP.PPTX (399.9 kB)

Good Morning:

In the race to year end, we've come to an issue regarding the legitimacy of the proposed "electricity bill redesign" regulation tracking to Cabinet for later today.

Issue:

Heading into LRC this week, Con-law appeared to come to the view (memo enclosed) that government regulations regarding on-bill messages have a "freedom of expression" / constitutional law risk.

Debate now about providing Cabinet with risk assessment and also some bureaucratic wrangling regarding Legislative Counsel wanting to "un seal" the draft regulation.

Background:

Noted at LRC and the con-law opinion is that our Government's historical and current on-bill regulations have the same constitutional law risk.

So, the proposed ENE Reg does not increase the risk. It's just that we've never had an opinion like this formulated.

We have been prescribing on-bill messages for most of the last decade without any legal ramifications.

Ontario Fair Hydro Plan:

At the time of OFHP launch, we had much debate about electricity bill redesign at both Cabinet and Caucus.

To that end, we have twice briefed Caucus and included in both the OFHP and LTEP Cabinet Submissions reference to our "redesign action plan".

The RAP has been an on-going, 6-month exercise, working with a large team of LDC's on bill redesign (Thibeault Update Deck from last Month enclosed).

Using a TBS best practice, "behavioral scientist" types have come through and run sessions with groups of consumers to focus group bills. (Aside - that process was really quite revealing).

Hydro One vs. Every Other Utility:

In Summer 2017, Cabinet passed an enabling regulation to allow Hydro One to launch their own redesigned bill ahead of everyone else.

That hit Hydro One customers in November.

Therefore we have the prospect now of wanting to bring everyone else into the fold, properly.

In fact, in media reports regarding H1's new bills, Toronto Hydro media relations were critical of how they are not permitted the same liberties (because the prescriptive "old billing regulations" still apply to every other LDC.

In fact, LDC's participating in the bill redesign action plan working group know this reg is coming and some (Toronto and Ottawa I know for sure, perhaps more) have started to spend money to prepare their database systems and operations for bill updates. Again, the prospect of not approving will leave all other utilities in the province, besides Hydro One in a state of confusion and impact stakeholder relations. Given that Toronto Hydro complained in Toronto Star about the H1 permissive regulation a few weeks back, I suspect failure to move on this commitment will have some impact.

Dynamic Messaging :

Some of the public relations issues of late has centered around the prospect of utilities doing a direct - on -bill "dynamic message" for how much the OFHP saved each individual ratepayer.

As we know from OFHP mechanics. It is 25% ON AVERAGE. So, low-volume condo dwellers who use mostly off-peak see less than 25%. On the other hand, we know that those who are receiving the distribution rate credits to help equalize the delivery charges across rural Ontario, see somewhere between 40-50%.

To that end a "dynamic calculus" on the bills is a double edged sword. Members will need to be prepared to explain the "average" bit to constituents should they get their bill with a "18%" total reduction.

Proposed "Dynamic Messaging" is only one small part of ENE regulation to clean up the bills, make them make them more accessible and provide LDC's with the ability to better manage customer concerns. I dare say, the impacts of have been somewhat overblown. In our effort to de-politicize the bills, we are getting criticized for the reverse.

Getting Out of the Weeds:

Finally, the entire intention of the redesign action plan has been to simplify electricity bills.

That's why we have spent the 7 months since OFHP announcement to work with LDC's, consumer groups and experts to get out of the business of deciding what the electricity bill should look like via the Cabinet / Caucus echo chambers.

My favourite parable from the "behavioual scientists" was this: the Debt Retirement Charge line item.

In 2014, our government got rid of the DRC for residential customers. But because we thought it was a good idea at the time, we have a regulation that requires LDC's to continue to list the DRC on your monthly electricity bill to this day. It is "zeroed" out , ostencibly to show that it is a charge that has been removed from your bill.

Customers participating in the focus group end up reporting, by a wide margin. That zero figure actually upsets people because they think it will come back at some point.

Bottom line.

We suggested this regulation to harmonize between and among LDC's (Hydro One vs. Everyone else); take the advice of experts and LDC's who are cleaning up bill designs and to conclude and respect the stakeholder exercise that began with OFHP 7 month consultation.

Legislative Counsel may un-seal the regulation. MAG reports that AG will need to advise Cabinet of the supposed Constitutional Law risks, but Minister Thibeault will be asking Cabinet to approve our propose Regulation as drafted, sealed or un-sealed.

Many thanks, in advance.

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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.