MINISTRY OF ENERGY

TREASURY BOARD / MANAGEMENT BOARD of CABINET SUBMISSION

APPROPRIATION INCREASE FOR ONTARIO CLEAN ENERGY BENEFIT (OCEB) TRAILING LIABILITY

January 31, 2017

CONFIDENTIAL
MINISTRY OF ENERGY

1.0 MINISTRY REQUEST

The Ministry of Energy is requesting that Treasury Board/Management Board of Cabinet (TB/MBC):

- APPROVE an expenditure increase of $20.8 million in 2016-17 in the transfer payment line entitled “Ontario Clean Energy Benefit” under Vote/Item 2905-01, Electricity Price Mitigation.

2.0 PURPOSE OF REQUEST

The Ministry of Energy (“ENERGY”) is requesting an appropriation increase from TB/MBC to fund trailing liabilities related to the Ontario Clean Energy Benefit.

The OCEB program appropriation ended in fiscal year 2015-16. ENERGY accrued $53 million at the end of 2015-16 to cover anticipated trailing claims that continue to come in after program ended. The Ministry has now exhausted the accrual after making the November bill payment and will need additional funding to cover more claims.

ENERGY has indicated this risk in past Quarterly Reports and PRRT submissions.

An appropriation increase is required at this time in order to ensure sufficient funding is in place for future OCEB claims.

3.0 KEY CONTEXT

The Ontario Clean Energy Benefit (OCEB) was announced in the 2010 Fall Economic Statement as a way to help families, farms and small businesses mitigate the rising costs of electricity through the transition to a cleaner, modern electricity system. The program provided a benefit equal to 10% of the total cost of electricity on eligible consumers’ bills, including tax. The program ran from January 1, 2011 until December 31, 2015, with a 3,000 kilowatt hour per month cap implemented September 1, 2012.

Although OCEB ended December 31, 2015, the Ministry continues to make payouts to local distribution companies (LDCs) and unit sub-metering providers (USMPs) on trailing invoices. Payments have also been made to customers who qualified for OCEB between January 1, 2011 and December 31, 2015 but were not receiving it or were receiving incorrect amounts (e.g., due to bill error).

The Ministry accrued $53 million at the end of 2015-16 to allow for anticipated trailing program expenses in 2016-17 and beyond. There have been questions surrounding the interpretation of the *Ontario Clean Energy Benefit Act, 2010,* and the eligibility of certain multi-unit residential complexes. This eligibility criterion has been taken advantage of, resulting in a larger amount of multi-unit residential claims than originally anticipated. The Ministry received a large invoice in November 2016 and has now nearly exhausted its OCEB accrual. Only $115,000 remains in the OCEB cost centre for use and there is high risk that the next set of monthly claims could exceed this amount.

If payments are not made in accordance with the IESO Market Rules, ENERGY will be considered to have defaulted on the payment, and will be required to pay the balance and interest immediately.

The original regulation that established the Ontario Clean Energy Benefit (O. Reg. 495/10) did not specify an end date for the government's liability to pay OCEB to consumers. This has created an on-going liability for which ENERGY has run out of funds to service. In fall 2016, ENERGY amended O. Reg. 495/10 through *Bill 13, Ontario Rebate for Electricity Consumers Act, 2016,* to include an end date for OCEB claims. LDCs and USMPs have until August 1, 2017 to submit their claims.

ENERGY is anticipating that an additional $20.8 million is required to cover the remaining trailing claims from LDCs and USMPs to wrap up the program. This would include payments for claims submitted in the current year, as well as year-end accrual to be set up for claims that continue to come in until August 2017.

4.0 BACKGROUND

In an effort to combat rising electricity costs in Ontario, the Government of Ontario announced OCEB in the 2010 Fall Economic Statement. OCEB was created through the *Ontario Clean Energy Benefit Act, 2010*. The OCEBA authorized financial assistance for a 5-year period from January 1, 2011 to December 31, 2015, inclusive. The program provided a benefit equal to 10% of the total cost of electricity on eligible consumers' bills (families, farms and small businesses), including tax, on the first 3,000 kilowatt hours consumed per month. To date, OCEB has provided $5.27 billion in benefits to eligible Ontarians.

2015-16 Accrual:

ENERGY foresaw this liability, and accrued $53 million at the end of 2015-16 to address it.

The OCEB liability forecast is based on an estimate from historical OCEB claims from LDCs, USMPs and Independent Power Authorities (IPA).

- The original 2015-16 accrual was determined using the following methodology:
  - the estimated number of consumers in each of the categories was multiplied by the OCEB amount owed to each eligible customer for a 5-year period,
  - the proportion of customers who did not receive the OCEB due to error, and,
  - the proportion of customers who were expected to come forward to claim retroactive OCEB.

- The estimate of unclaimed OCEB under the IPA OCEB program was added to the total accrual estimate of the main OCEB program, to derive a total accrual estimate.

ENERGY has been paying invoices monthly since the conclusion of the program; however, there have been large claims by multi-unit residential complexes that have depleted the accrual (e.g., Toronto Hydro and Hydro Ottawa).

The Ministry flagged in the OCEB risk in 2016-17 Q1 and Q2 reporting process that outstanding OCEB claims may be greater than the accrual set aside, and that the Ministry may need additional program funding. This risk has materialized with the depletion of the accrual account.

Issuing Payments:

ENERGY disperses funds to licensed distributors, active unit sub-metering providers, and retailers using retailer-consolidated billing (typically consolidated through distributor's billing) through the Independent Electricity System Operator's (IESO) market settlement system on a monthly basis. Funds are released based on monthly reports to IESO detailing OCEB payments from LDCs, USMPs and electricity retailers.

This relationship between ENERGY and the IESO is detailed in a Memorandum of Understanding (MOU).

Based on the information provided in the above-mentioned monthly reports, IESO issues an invoice and settlement statement 10 business days after the end of a month to ENERGY.

In according with IESO Market Rules, ENERGY has two business days after receiving the invoice to make payment to the IESO. Subsequently, IESO, has four business days after issuing the invoice to ENERGY to make payment to LDCs and USMPs.

The Ontario Financing Authority (OFA) is responsible for issuing payments from ENERGY's appropriation to the IESO. The OFA used their existing settlement processes to ensure payments are made within two business days.

If payments are not made in accordance with the IESO Market Rules, ENERGY will be considered to have defaulted on the payment, and will be required to pay the balance and interest immediately.

OCEB Trailing Liability End Date

Although the program ended on December 31, 2015, the *Ontario Clean Energy Benefit Act, 2010* (O. Reg 495/10) did not specify an end date for the government's liability to pay OCEB to consumers. This has created an on-going liability for the Ministry.

The Ministry flagged the fiscal risk exposure from the lack of OCEB end date through in its Quarterly Expenditure Management Reporting throughout 2015-16 and through the 2016-17 PRRT process.

In February 2016, the Ministry received approval from the Legislation and Regulations Committee for the authority to amend O. Reg. 495/10 by including a cut-off date for OCEB liability in the 2016 Spring Budget Bill.

In fall 2016, ENERGY introduced *Bill 13, Ontario Rebate for Electricity Consumers Act, 2016.* Through this Bill, ENERGY was able to amend O. Reg. 495/10 to include a cut-off date for all OCEB claims. LDCs and USMPs have until August 1, 2017 to submit their claims.

5.0 TIMING

An appropriation increase is required immediately in order to ensure sufficient funding is in place for future OCEB claims.

For outstanding OCEB claims, the deadline for outstanding LDC and USMP claims is August 1, 2017, and it is expected that payments will continue until then. ENERGY will require sufficient funding to cover all outstanding claims submitted by the deadline.

6.0 FINANCIAL IMPACT

ENERGY requires an appropriation increase of $20.8 million to cover the remaining trailing liability from LDCs and USMPs for OCEB.

Given the magnitude of the funding, the Ministry does not have any internal offsets for this request.

7.0 STAKEHOLDER ANALYSIS

Key stakeholders for the OCEB trailing liability payments are LDCs and USMPs, and the IESO.

IESO:

The IESO invoices ENERGY for the OCEB claims and issues the reimbursements to LDCs and USMPs. If ENERGY cannot provide funding within two business days of being invoiced by the IESO, the IESO may have to look at alternative payment methods to reimburse LDCs and USMPs. Alternative payment methods for the IESO may include making payment from IESO Treasury, through loans, or a combination of the two. Inability to issue payments puts ENERGY into a MOU breach and into a default position as per IESO Market Rules. A breach of the MOU between ENERGY and the IESO may result in ENERGY being charged significant interest on any owed principal.

LDCs and USMPs:

Without reimbursements from IESO, LDCs and USMPs will be left with a deficit as they have already applied the benefit to customer bills before making the claims to the IESO. This puts LDCs and USMPs in a tight position as they are out capital and may put the Government of Ontario in a difficult position if funding cannot be provided.

8.0 RISK ASSESSMENT AND MITIGATION

Public Interest

There is a high-level of public interest in rising electricity prices and the price mitigation programs delivered by the Ministry. The inability to reimburse LDCs and USMPs has the potential to create a negative public perception of the government not funding electricity price mitigation programs. The government committed to the delivery of this program and the remaining liability is a component of the OCEB program. Not providing reimbursement to LDCs and USMPs is contrary to previous government direction, and it also goes against the government's position of combatting increasing electricity prices.

There is a substantial risk to stakeholders if ENERGY does not receive sufficient funding for OCEB trailing liabilities. LDCs and USMPs will be required to provide OCEB to their eligible consumers, but will not be able to recover this amount from ENERGY. This may reduce ability to deliver similar programs in the future.

ENERGY needs the additional funding to service the liability until the cut-off claim date of August 1, 2017.

Financial Risks

An allocation increase is required to ensure ENERGY has sufficient funding for future OCEB claims. Without this increase, ENERGY will default in its payments to the IESO, and subsequently LCDs and USMPs.

ENERGY does not have any available internal offsets for the requested amount.

Legal Risks

The Province has a responsibility to issue payments to LDCs and USMPs as OCEB was a public, tax-based program.

Inability to issue payments will result in a breach of MOU with the IESO.

9.0 RECOMMENDATION

The Ministry is requesting that Treasury Board/Management Board of Cabinet:

- APPROVE an expenditure increase of $20.8 million in 2016-17 in the transfer payment line entitled “Ontario Clean Energy Benefit” under Vote/Item 2905-01, Electricity Price Mitigation.