

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

From: "Greco, Delia (MAG)" <delia.greco@ontario.ca>
To: "Teliszewsky, Andrew (ENERGY)" <andrew.teliszewsky@ontario.ca>, "Archer, Amy (MAG)" <amy.archer@ontario.ca>
Cc: "Whittington, Matt (ENERGY)" <matt.whittington@ontario.ca>
Date: Tue, 12 Dec 2017 20:56:24 -0500

I don't know the entire history of this file but I do know that according to MAG officials, CLB received the request from ENE to provide the opinion on the reg late Thursday night. LRC was yesterday.

Regardless of these facts, let's work together to find a solution.

Delia Greco
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From: Teliszewsky, Andrew (ENERGY) <Andrew.Teliszewsky@ontario.ca>
Date: Tuesday, Dec 12, 2017, 8:41 PM
To: Archer, Amy (MAG) <Amy.Archer@ontario.ca>
Cc: Whittington, Matt (ENERGY) <Matt.Whittington@ontario.ca>, Greco, Delia (MAG) <Delia.Greco@ontario.ca>
Subject: Re: Energy reg - Reg2017.0643 - Amending O. Reg. 196/17 (Invoicing Requirements) - Sealing issue

Hi.

So Cabinet passed a regulation in the summer to allow Hydro One to do this invoicing.

So not only is this the 11th hour coming from MAG-CLB but we have the awkward scenario having one utility operating under the "loose regime" with the discretion to add what they wish and the 65-ish other LDCs are waiting for this regulation (we've had a working group for 6 months).

I've done this before (MTO in the major Minority). But Cabinet has the authority to pass an unsealed regulation. Its out of the norm, but not impossible. They just need to be advised of these risks.

Atel/

Andrew Teliszewsky

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On Dec 12, 2017, at 8:36 PM, Archer, Amy (MAG) <Amy.Archer@ontario.ca> wrote:

Adding Andrew.

Sent with BlackBerry Work (www.blackberry.com)

From: Archer, Amy (MAG) <Amy.Archer@ontario.ca>
Date: Tuesday, Dec 12, 2017, 8:34 PM
To: Whittington, Matt (ENERGY) <Matt.Whittington@ontario.ca>, Andrew teliszewsky <Andrew.teliszewsky@msgov.gov.on.ca>
Cc: Greco, Delia (MAG) <Delia.Greco@ontario.ca>
Subject: FW: Energy reg - Reg2017.0643 - Amending O. Reg. 196/17 (Invoicing Requirements) - Sealing issue

A new issue regarding the Fair Hydro Plan Act regulation has arisen. I understand that your office has been made aware but I wanted to ensure that you have all the information that I do on this.

Below is a draft memo from the Chief Legislative Counsel to Minister Matthews regarding the regulation. It is draft and still subject to approvals.

If you have not already been brought up to speed, please let me know and I will provide you with more information.

Amy

Sent with BlackBerry Work (www.blackberry.com)

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.