



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Joshua A. Krane

Partner

Dir: 416-863-4187

joshua.krane@blakes.com

Reference: 14229/1

December •, 2017

VIA E-MAIL
CONFIDENTIAL

Mr. Rafe Engle
R.S. Engle P.C.
26 Sussex Avenue
Toronto, ON M5S 1J7

**PRIVILEGED AND
CONFIDENTIAL – DRAFT**

Dear Mr. Engle:

ASC Ref. # 142792, 142861 and 142892 – Fair Hydro Plan

Further to your letter of November 13, 2017, we confirm your understanding that electricity bills to hydro customers will be lowered, on average, by 25% effective January 1, 2017, and, for the next four years, any increases to these reduced rates will not exceed the annual rate of inflation. In response to the other two issues, we provide additional information below. We would be pleased to convene a call with you to discuss this matter once you have reviewed this submission.

A. Affordability Claim

It is important that the ASC assess the affordability claim in the context of the entire message, which we reproduce below:

Recent changes have made electricity bills more affordable. By this summer, household electricity bills will be an average of 25% less, and electricity rates won't increase beyond the rate of inflation for four years. Learn more at Ontario.ca/FairHydroPlan.

Your memorandum acknowledges that the claim may be “literally true” but we understand the ASC’s position is that the claim is not sufficiently qualified in light of the “longer term financial pain, as has been argued by critics of the program.”

First, the “affordability claim” in the message above is made in the context of the “25% reduction” claim. Electricity bills are more affordable today (and will be for the next four years) because the government, through the Ontario Energy Board, has taken steps to reduce the invoice amounts by an average of 25% and will hold any increases to the rate of inflation for four years. The qualifying language starting with the words “by this summer” is just as prominent in the message as the words “more affordable”. In the leading case on this issue, the Ontario Superior Court dismissed an application for an injunction finding that the qualifying words “up to” appeared as prominently in the advertising as the associated “40% less” claim:

The qualifiers in the instant case must be considered in the context which the general impression of the advertisement conveys. These qualifiers, like the disclaimers in the above-noted cases, attempt to explain or further restrict the generality of the given representation. Most importantly, the qualifiers form part of the primary representation in that they do not appear elsewhere in the ad in small print marked with an asterisk. (Emphasis added)¹

The affordability claim cannot be disentangled from the 25% reduction claim, which immediately follows, nor should the MOE be required to make additional disclosure in a 30-second radio spot about *possible* long term increases in invoice amounts. No advertiser is ever held to a standard that requires it to explain that invoices/prices may increase after a price reduction.

Second, your memo states that “conventional advertisers cannot tax their customers indirectly or directly, as governments can, for additional revenue to make up any shortfall in the actual cost of what’s being sold by the advertiser and purchased by the consumer.” This statement is not an accurate representation of how the current Plan achieves the invoice reductions. No additional taxes are being levied to make up a shortfall.

The majority of the invoice reductions (15%) will be achieved by refinancing the “global adjustment” or “GA”, which represents the capital costs that have been incurred to rebuild Ontario’s electricity generation and transmission system. Instead of making consumers pay those costs today, the government has mandated that those costs be repaid over the life-cycle period for the assets. The GA refinancing ensures that the deferred costs are borne by future ratepayers, who are the users the electricity system, and not taxpayers.

The government achieves the bulk of the remaining reductions (8%) through a rebate of the provincial portion of the HST. Again, the government is not taxing Ontarians to cover this rebate. After four years, the HST on electricity may be reinstated, but it is not a new tax.

The MOE acknowledges that the smallest portion of the rate reduction (2%) is being funded through tax revenues, but these are the costs that ought to properly be borne by taxpayers and not ratepayers. The Ontario Electricity Support Program (OESP) and Rural and Remote Rate Protection (RRRP) Program are programs designed to support electricity consumers that are most vulnerable to increasing electricity costs. The government’s decision to fund these programs through provincial revenues was taken in recognition of the fact that these programs are for the common good and are more appropriately supported by the tax-base rather than the rate-base.

Third, the government has not hidden the fact that electricity invoices may increase at levels above inflation in 2021. As noted above, the 30-second radio spot directed consumers to the Fair Hydro Plan website where they could obtain additional information about how the Plan works. The government’s policy objective was to ensure that ratepayers, today and in the future, pay for investments in the

Commented [jb1]: Recommend adding a line following this sentence describing who these programs help. Low-income consumers and those customers living in the most rural and Northern communities paying the highest delivery costs.

¹ *Purolator Courier Ltd. v. United Parcel Service Canada Ltd.*, 1995 CanLII 7313 (ON SC) at para. 56.

electricity system in proportion to the benefit these consumers receive from the system. The MOE has been clear with Ontarians that prices could increase over time.²

It is not certain that invoices will be higher in 2021 and therefore, the representations are not misleading. Moving forward, the government will continue to identify and implement initiatives to take costs out of the electricity system, which would reduce the cost of the GA refinancing program and help ensure the affordability of electricity into the future. Ontario has released its 2017 Long-Term Energy Plan (2017 LTEP) which is focussed on continuing to put downward pressure on electricity bills over the long-term. For example, the Independent Electricity System Operator's (IESO) Market Renewal initiative will result in a more efficient marketplace with competitive and transparent mechanisms that meet future system needs at the lowest cost. The project is expected to save up to \$5.2 billion and forms a key component of Ontario's plan to manage the cost of electricity over the long-term.

Accordingly, the MOE's position is that the affordability claim is qualified by the fact that invoices will not increase beyond the rate of inflation for four years and directs ratepayers to visit the Fair Hydro Plan website for more information. If the ASC is aware of standalone "affordability claims", i.e., without the additional language referenced above, the MOE would be pleased to discuss this matter further. However, it is the MOE's understanding that no such claims have been brought to the ASC's attention at this time.

B. Reliability Claim

The claim in issue is that "upgrades to our electricity system have made it more reliable." This claim is true and supported by substantial evidence available from the IESO.

The Ministry's statement regarding investments supporting increased reliability relate to investments that have been made to improve the reliability of the bulk system, which is subject to continent-wide reliability standards that are in place to improve the resiliency of our interconnected network.

After the 2003 blackout, a Canada-U.S. Task Force was formed to identify the causes of the power outage and seek recommendations to help prevent future outages. Their final report identified 46 specific technical and policy recommendations on minimizing or preventing future blackouts.³ The top recommendation stressed the creation of mandatory, enforceable reliability standards with penalties for non-compliance.

² "The plan enables the Independent Electricity System Operator and Ontario Power Generation to work together to spread out the costs of our clean electricity investments over a longer period of time. We've committed to holding rates to inflation for four years. In later years, the cost of refinancing will be recovered from ratepayers." See <https://www.ontario.ca/page/ontarios-fair-hydro-plan>.

³ Final Report on the Implementation of the Task Force Recommendations, Natural Resources Canada, U.S. Department of Energy, September 2006, <http://www.ieso.ca/-/media/files/ieso/document-library/media/blackout-2003-canada-us-task-force-final-report.pdf>

Today, the North American Electric Reliability Corporation (NERC) and the Northeast Power Coordinating Council (NPCC) define the reliability requirements for planning and operating the interconnected North American bulk electric system. The IESO is a member of NERC, representing Ontario's interests in the development of standards affecting all jurisdictions across Canada and the U.S., and NPCC which is responsible for promoting and improving the reliability of the interconnected bulk power system in the northeast of North America. The IESO's Market Rules define the roles and obligations of the IESO and all market participants who own or operate elements and facilities that form part of the IESO-controlled grid. NERC, NPCC and IESO use a number of reliability indicators, such as reserve margin, resource adequacy and transmission adequacy to assess reliability performance.⁴ NERC, NPCC and the IESO all publish regular reports assessing reliability using these metrics.⁵

In June 2003, the Independent Electricity Market Operator, now the IESO, indicated that resource shortfalls were forecast for 2003 and 2004 necessitating the procurement of temporary gas generation to help address the tight supply situation.⁶ As noted in the prior submission, Between 2005 and 2015, the province saw a net growth in electricity supply: over six GW of installed coal-fired capacity was shut down and replaced with more than 14 GW of renewable, natural gas fired, nuclear and demand response resources.⁷ Ontario's capacity margins, an indicator of resource adequacy, increased over the same period.⁸

Transmission capacity has also increased by about 10,000 MW since 2003. New generation resources are often supported by transmission investments to provide for the delivery of power generated by the new resource. In this context, an increase in transmission capacity represents the combined capability of the transmission system to reliably transfer increased amounts of power from one part of Ontario to another. For example the Bruce to Milton Transmission Reinforcement project, completed in 2012, connected more than 3000 MW of generation to the grid.

⁴ NERC, Reliability Indicators, <http://www.nerc.com/pa/RAPA/Pages/ReliabilityIndicators.aspx>, NPCC, Regional Reliability Reference Directory #1, Design and Operation of the Bulk Power System, https://www.npcc.org/Standards/Directories/Directory_1_TFCP_rev_20151001_GJD.pdf, IESO, Methodology to Perform Long Term Assessments, http://www.ieso.ca/-/media/files/ieso/document-library/planning-forecasts/18-month-outlook/methodology_rtaa_2017dec.pdf?la=en

⁵ NERC reports can be found online here: <http://www.nerc.com/pa/RAPA/PA/Pages/default.aspx>; NPCC reports can be found online here: <https://www.npcc.org/Library/Seasonal%20Assessment/Forms/Public%20List.aspx>, IESO reports can be found online here: <http://www.ieso.ca/en/sector-participants/planning-and-forecasting/18-month-outlook>

⁶ IESO, 18-Month Outlook: An Assessment of the Reliability of the Ontario Electricity System from July 2003 to December 2004

⁷ IESO, Ontario Planning Outlook Module 1: State of the Electricity System: 10-Year Review, slide 15, <http://www.ieso.ca/-/media/files/ieso/document-library/planning-forecasts/ontario-planning-outlook/module-1-state-of-the-electricity-system-20160901-pdf.pdf?la=en>

⁸ IESO, Ontario Planning Outlook Module 1: State of the Electricity System: 10-Year Review, slide 17, <http://www.ieso.ca/-/media/files/ieso/document-library/planning-forecasts/ontario-planning-outlook/module-1-state-of-the-electricity-system-20160901-pdf.pdf?la=en>

Ontario's market participants have also made, and continue to make, significant investments in order to comply with evolving NERC and NPCC reliability standards. For example, Hydro One has invested \$50 million over the past five years in cybersecurity measures and expects to invest another \$50 million in 2017 and 2018 to comply with NERC's Critical Infrastructure Protection standards.⁹

Investments like the ones above have improved the system in terms of resource availability and transmission capability, and operational preparedness. However, it is possible for the bulk system reliability to be improved as a whole, as per the intent of the statement made in the advertisement, without resulting in perceived improvements for every electricity customer across the province.

Indeed, a joint Federal, Provincial, Territorial (FPT) report on the implementation of reliability standards written 12 years after the blackout, characterized the results as follows: "Balancing the supply and demand of electricity will always be a challenge given the complex, variable and instantaneous interaction of numerous generators and loads in different locations. Additionally, the unpredictable nature of external factors such as extreme weather events makes it difficult to draw conclusive trends from year-over-year comparisons. Qualitatively, it can be said that the specific and systemic issues that contributed to the 2003 blackout have been addressed by NERC standards and are being monitored and enforced. Indeed, one measure of success is the fact that there has not been an event of similar scale on the BES since 2003. For example, NERC included in its State of Reliability Report 2014, that in 2013, the BES was able to withstand the most "stressful" events of the year without significant loss of transmission, generation or load. These measures indicate the system's ability to perform reliably over a variety of operating conditions. 2013 also saw significantly fewer high priority energy emergency alerts resulting from an imminent or initiated loss of load than previous years. This further demonstrates the ability of the BES to respond to a variety stresses (severe weather, system constraints, etc.)."¹⁰

While it is possible that some consumers have experienced less reliable service today, this does not detract from the truthfulness of the advertising. Ontario's electricity system, as a whole, is more reliable today than in 2005 following the more than \$70 billion in investments made to increase generation and transmission capacity.

Commented [jb2]: We've been consistently saying "nearly" \$70 billion the last few months. Has this changed?

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The MOE appreciates the ASC's willingness to continue a dialogue in respect of the messages in issue. If it would be helpful, we can make ourselves available for a call to discuss this submission and next steps.

Yours very truly,

⁹ Hydro One 2017/18 Transmission Rate Application, Exhibit B1, Tab 3, Schedule 2, pages 24-27 of 43, https://www.hydroone.com/abouthydroone/RegulatoryInformation/txrates/Documents/HONI_Tx_Appl_Ex_B1_20160531.pdf

¹⁰ After the Blackout: Implementation of Mandatory Electric Reliability Standards in Canada, Energy and Mines Ministers' Conference, July 2015, page 15, <https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/www.nrcan.gc.ca/publications/emmc/15-0137%20EMMC-After%20the%20Blackout-e.pdf>

Joshua A. Krane

- c. Sam Lyon, *Ministry of Energy*
Laurie Sloan, *Advertising Review Board*
Maud Murray, *Legal Services Branch*