Re: OFHP Bill Presentment- Updated Risk Language for CBN

From: "Whittington, Matt (ENERGY)" <"/o=govon/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=whittington, matt (energy)cce">
To: "Chatterjee, Jeet (ENERGY)" <jeet.chatterjee@ontario.ca>
Cc: "Schlaepfer, Martin (ENERGY)" <martin.schlaepfer@ontario.ca>
Date: Wed, 13 Dec 2017 00:25:02 -0500

Hey Jeet

Sorry for the delay. Feel free to share.

Thanks
Matt

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Chatterjee, Jeet (ENERGY)
Sent: Tuesday, December 12, 2017 7:01 PM
To: Whittington, Matt (ENERGY)
Cc: Schlaepfer, Martin (ENERGY)
Subject: Fw: OFHP Bill Presentment- Updated Risk Language for CBN

Matt,

CO sent us their updated legal risk for the Bill presentment Cabinet note edited by MAG and staff have the following edits in Ted below.

Let us know if we can share with CO.

The proposal does not change the legal risks associated with the inclusion of OFHP messaging on consumer's electricity bills in the existing regulation, but a constitutional law risk that was not previously outlined has been identified. The Ministry of the Attorney General has advised that there is a moderately-high risk that government requiring LDCs and USMPs (utilities) to convey this information in this way would be found to constitute an unjustified violation of the utilities' freedom of expression under the Charter. Therefore a law that requires persons to communicate certain things must be justified under the Charter analysis.

The risk arises because it is unclear whether the objective of advising consumers of the effect of government policy on their electricity bill when it does not directly relate to the calculation of the invoiced amount is pressing and substantial, and because there may be more neutral and specific means of communicating information to consumers regarding the impact of the Fair Hydro Plan. If more neutral and specific words were used to communicate the information in question, there would be a moderate risk that the proposed amendment would be an unjustified violation due to the uncertainty as to whether it serves a pressing and substantial purpose.

> As noted, ENERGY has been working with utilities on the proposal through its formal Working Group and advises that the risk of a utility bringing a case of this nature forward is low and ENERGY advises it has LDC buy-in to provide this messaging. However, this fact does not mitigate against another person seeking public interest standing to bring a case forward. Hydro One has already been providing dynamic messaging to its customers since July 2017 and has received positive feedback to date. ENERGY advises that the regulation is not just to enforce compliance but also to establish a consistent methodology for calculating savings so that all Ontario consumers receive the same information. ENERGY also disagrees with the assessment that adjusting the wording would reduce risk. The message as proposed – Ontario's Fair Hydro Plan saved you $X – is a statement of fact, and as such provides information to consumers without embellishment. Adjusting the language to not reference OFHP would also raise policy and implementation concerns:
>
> - The simplicity of the message is based on an increased understanding of how consumers make use of information provided on their bills, informed by behavioural research. Consumers seek straight-forward explanations of the items on their bills. Disassociating the savings figure from OFHP raises the risk of consumer confusion regarding the figure, potentially leading to increased call volumes at LDC call centres.
> - Adding complexity and length to the message raises the risk that LDCs would run up against limitations within their billing systems and would not be able to accommodate the message.

From: Hindmarch-Watson, Tim (CAB)
Sent: December-12-17 2:28 PM
To: Chatterjee, Jeet (ENERGY)
Cc: Moore, Karen (CAB); Schlaepfer, Martin (ENERGY)
Subject: RE: OFHP Bill Presentment- Updated Risk Language for CBN
Importance: High

Hi Jeet:

MAG provided it's fact check, which we have adapted somewhat to the below. Please provide additional feedback ASAP.

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would be a moderate risk that the proposed amendment would be an unjustified violation due to the uncertainty as to whether it serves a pressing and substantial purpose.

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Thanks,

Tim Hindmarch-Watson
416-325-4618