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Reference: 14229/1

VIA E-MAIL
CONFIDENTIAL

PRIVILEGED AND

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

Dear Mr. Engle:

ASC ~~Response – Affordability Narrative~~ 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. 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:

~~Ontario's Fair Hydro Plan has lowered electricity bills by 25% on average for residential consumers and will hold increases to the rate of inflation for four years. The reduction reflects a number of initiatives, including:~~

> 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]

- ~~Shifting cost recovery for electricity support programs from electricity bills to provincial revenues;~~

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.

- ~~The 8% rebate introduced on January 1, 2017; and~~

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.

- ~~Refinancing a portion of the Global Adjustment (GA).~~

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 ~~shifting of cost recovery for electricity support programs, namely the Ontario Electricity Support Program (OESP) and the majority of Rural or Remote Rate Protection (RRRP) from electricity bills to provincial revenues has lowered regulatory charges on everyone's electricity bills by approximately $3 per megawatt-hour (MWh).~~ 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.

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

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 OESP and RRRP 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. The decision was not made to recover a shortfall between the cost of electricity and amounts recovered from ratepayers~~.~~

~~It is the government's intention that the cost of these social programs will continue to be recovered through provincial revenues moving forward, and will not impact electricity bills in the future. Legislative and regulatory amendments made under the *Ontario Energy Board Act, 1998,* effective July 1, 2017, have enabled the funding of the OESP and majority of RRRP through the tax-base.~~

~~The 8% rebate, provided for under the *Ontario Rebate for Electricity Consumers Act, 2016,* reduces electricity bills for eligible consumers by an amount equivalent to the provincial portion of the HST. The rebate is also funded through provincial revenues, and was introduced in recognition of the social, environmental and economic goals that were achieved through the electricity system, including the phase out of coal-fired electricity generation.~~

~~The government has also been clear that the GA refinancing program is structured in such a manner that, following the 25% decrease for a typical residential consumer, increases will be held to the rate of inflation for four years. As previously noted, the affordability claim was qualified with the time limitation, as follows – "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."~~

~~It is important to note that the GA refinancing program was developed in the interests of fairly allocating the costs of electricity generating assets amongst ratepayers over the useful life of the assets, instead of their contractual terms~~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 electricity system in proportion to the benefit ~~received from them. We have~~these consumers receive from the system. The MOE has been clear with Ontarians that prices ~~would~~could increase over time. [2]

[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.

~~Taken together, the initiatives under Ontario's Fair Hydro Plan have made electricity bills more affordable~~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 Operation'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 ~~longer~~ long-term.

Accordingly, the MOE's position is that the affordability claim is qualified by the fact that invoices will not increase 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. ~~ASC Response –~~ Reliability ~~Narrative:~~Claim

~~Resource availability and transmission capability both influence the reliability of the electricity system. In terms of these bulk system reliability measures, the system faced challenges in 2003. In June 2003, the Independent Electricity Market Operator, now the Independent Electricity System Operator (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. Investments in the system since 2003 have increased this margin of available resources and so have in general resulted in a more resilient and reliable system.~~ 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. As noted in the prior submission:

- ~~According to the IESO, between~~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.

~~In addition, the IESO estimates that significant transmission projects have increased the transmission capacity by about 10,000 MW since 2003. New generation resources are often supported by transmission investments to deliver 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 clean and renewable energy.~~

~~Ad Standards raises the issue of particular customers not experiencing improved reliability. The investments above have clearly improved the system in terms resource availability and transmission capability. However it is possible for the bulk system reliability to be improved as a whole, as per the statement made in the advertisement, without resulting in perceived improvements for every electricity customer across the province.~~

- Transmission capacity has increased by about 10,000 MW since 2003, which allows the electricity system to reliably transfer increased amounts of power from one part of Ontario to another.

- **[NTD: the ASC's position is that the consumer understands "reliability" to mean continuity of supply, i.e., when a customer goes to turn on an electricity source, the source delivers electricity. The ASC referenced "outages" as the key metric, which also appears as a key metric in the NERC definition of "adequate level of reliability". Accordingly, please provide outage statistics showing that the electricity system has fewer outages today than it did in 2005 or, alternatively, that Ontario has put in place mechanisms to ensure that electricity is restored more quickly today compared to 2005.]**

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 and **[NTD: supplement with outage information]**.

* * * * *

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,

Joshua A. Krane

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

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