Message

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Sent: 2017-03-30 8:42:11 PM
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Subject: Fair Hydro - proposed language around "Regulatory Asset"
Attachments: #6702103-v3-Draft Legislation.doc

Common Interest Privileged and Confidential

James and Dan,

Thank you for sharing drafts of the legislation with us for our review.

Please see attached a suggested rework of the portions of the draft legislation dealing with the creation and transfer of the "Regulatory Asset". The attached draft adopts and expands upon the existing approach of deeming the "Regulatory Asset" to be a property interest. However, insofar as the "transfer" by the IESO is concerned, it seeks to protect against the possibility of the deeming of the property interest being ineffective by providing for a parallel divestment and granting of rights upon an "election" to transfer. The intent is to avoid, so far as IESO' s role in the transaction is concerned, any risk of the transfer being invalidated on the grounds of the deeming clause not being valid or effective.

In practice the IESO would both transfer and elect to transfer so that the additional language should not prejudice the characterization which may be sought to be applied to the transaction.

We appreciate that there is work still to be done on the definition of the "Regulatory Asset". In particular, given the likelihood of multiple transfers and multiple financings, it may be most efficient to have a series of "Regulatory Assets" each tied to a deferral referable to a specific period. Nonetheless, our view of the Regulatory Asset is that it is a right to charge to and collect from "prescribed consumers" and not from the LDCs or the IESO itself. It cannot be the case that the IESO, as the party which initially funded the deferral, becomes the party liable for the deferral. The assumption of that liability would be inconsistent with the roles, responsibilities and functions of the IESO.

This draft remains subject to comment at the IESO and accounting review, but we wanted to share it with you as soon as possible.

We would be pleased, and would appreciate the opportunity, to discuss the attached and the remainder of the draft legislation with you.

Regards,

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