Message

Sent: 2018-03-19 5:05:38 PM
To: Jo Chung [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7b0fc3e2c1244dc8c436312df523ecd-Jo Chung]; Rebecca Short [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8962b65533a42a4a89ba9679d53b637-Rebecca Sho]; Idalin McKenzie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d7d5b89cca6a4afa88ab3660c7e6c103-Idalin McKe]
Subject: RE: Market Rules Question on Default Levy

I agree if you believe the term "regulations" includes legislation and regulations. In the case of RRRP it is O. Reg. 442/01 and DRC is O. Reg. 493/01. Legislation refers to the laws that are enacted by the legislature or a law that is in process of being enacted, while regulations are the process of monitoring and enforcing a law as well as a document that contains the details of a written rule. In the case of ORECA and OFHPA these

1. The term "any related regulations" in sections 1.1.2 and 1.2.1 of Chapter 9 is not a defined term and therefore may be interpreted quite broadly (i.e. any settlement related to the Ontario Rebate for Electricity Consumers Act could be 'related' to the Electricity Act of the Ontario Energy Board Act.)

Regards,

Jeannette Briggs Director, Settlements - Corporate Services
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From: Jo Chung
Sent: March 19, 2018 3:16 PM
To: Jeannette Briggs; Rebecca Short; Idalin McKenzie
Subject: RE: Market Rules Question on Default Levy

Jeannette,

Thanks for your response – I wanted to better understand whether the proposed change below is a "nice to have" or a "must have", noting that the attached Q&A document Rebecca had prepared earlier in the rule change process appears to indicate that the existing rules already gives the IESO the authority to charge items such as the Ontario Rebate for Electricity Consumers and the Ontario Fair Hydro Plan.

Please let me know if it's easier to discuss with Rebecca and I.

Jo

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From: Jeannette Briggs
Sent: March 19, 2018 12:16 PM
To: Rebecca Short; Idalin McKenzie
Cc: Jo Chung
Subject: RE: Market Rules Question on Default Levy

Michael Boll and I chatted about this on Friday. I absolutely agree this needs amendment and therefore TP attention. I like the elegance of leaving it broader to be more inclusive of future policy which is handled through amended or new legislation or regulations.

Idalin can you please be the Settlements lead and include Yan for education on the TP process.

Regards,

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From: Rebecca Short
Sent: March 19, 2018 11:03 AM
To: Jeannette Briggs; Idalin McKenzie
Cc: Jo Chung
Subject: RE: Market Rules Question on Default Levy

Jeannette, Idalin,

After looking into the default levy question, Legal has suggested that we may need to consider further amendments to Chapter 9 Sections 1.1.2 and 1.2.1 to account for additional legislation such as the Ontario Fair Hydro Plan Act and the Ontario Rebate for Electricity Consumers Act. The suggestion is highlighted in yellow below (layered onto our TP recommended redlined MR-00434 rules):

> 1.1.2 This chapter sets out the respective rights and obligations of the *IESO* and of *market participants* in determining, billing for and effecting payment in respect of financial obligations arising from the *IESO-administered markets*, other provisions of the *market rules*, and legislation including without limitation the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*, and any related regulations including, but not limited to the following:

And

> 1.2.1 Notwithstanding any other provisions within the *market rules*, *market participants* shall remit to the *IESO* such applicable *settlement amounts* and other payments as may be required ~~under the provisions of~~ to comply with the relevant

provisions of legislation, including without limitation, the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998* and any related regulations, as amended from time to time.

Please provide comment/insight on the IESO's current authority to settle 'regulated settlement' that does not form part of the Electricity Act or the Ontario Energy Board Act. Was there any discussion when the Fair Hydro or Rebate Acts were initiated? I have researched each Act and think the following points should be considered before pursuing changes:

1. The Ontario Fair Hydro Act has been woven into the Objects of the IESO in the Electricity Act under section 6 (1) (q.1), meaning that the Ontario Fair Hydro Act can be settled based on the authority of Chapter 9 (1.1.2 and 1.2.1):

   6 (1) The objects of the IESO are,
   ...
   (q.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,
   (i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*,
   (ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and related settlement activities,
   (iii) engaging in activities related to the transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,
   (A) incurring liabilities in relation to the regulatory asset,
   (B) transferring the regulatory asset under section 26 of the *Ontario Fair Hydro Plan Act, 2017* for consideration, and
   (C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;
   (r) to collect and make public information relating to the short term, medium term and long term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and
   (s) to engage in such other objects as may be prescribed by the regulations. 2014, c. 7, Sched. 7, s. 3 (1); 2016, c.

2. The Ontario Rebate for Electricity Consumers Act specifically states that in the event of a conflict with the market rules, the Act itself shall prevail, meaning that any rule changes would provide a true-up to be consistent with the Act, but would not create a new obligation since the Act prevails anyway:

   Regulations
   (2) The Lieutenant Governor in Council may, for the purpose of this section, make regulations,
   (a) authorizing the Minister of Energy to make payments to persons who are electricity vendors or persons prescribed by the regulations in respect of the amount of financial assistance to which consumers are entitled under this Act and prescribing methods for determining the amounts payable;
   (b) requiring the IESO to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of financial assistance provided under this Act or the regulations and prescribing methods for determining the amounts payable;
   (c) requiring a licensed distributor to make payments to other licensed distributors or licensed retailers in respect of financial assistance under this Act and prescribing methods for determining the amounts payable;
   (d) requiring a person who is an electricity vendor or a person prescribed by the regulations to make payments in respect of financial assistance to consumers or other persons entitled to receive the financial assistance and prescribing the circumstances in which such payments are to be made and methods for determining the amounts payable;
   (e) authorizing the Minister of Energy to make payments of financial assistance directly to consumers and prescribing the circumstances when such payments are to be made;
   (f) requiring a person who is an electricity vendor or a person prescribed by the regulations to make payments to the Minister of Finance in respect of amounts received by them or in circumstances prescribed by the regulations and prescribing methods for determining the amounts payable;
   (g) authorizing payments referred to in clause (a), (b), (c), (d) or (f) to be made by way of set-offs and credits and prescribing conditions entitling or requiring amounts to be set off or credited;
   (h) governing the payments required under clause (a), (b), (c), (d) or (f), including methods for paying the amounts payable and when the payments must be made, and governing methods for determining amounts to be set off or credited, including the times within which amounts must or may be set off or credited;

(i) for the purposes of this Act and the regulations, requiring persons who are electricity vendors or persons prescribed by the regulations to provide information to the Minister of Energy, the Minister of Finance, the IESO, the Board or licensed distributors and prescribing the information to be provided and when it must be provided;
(j) governing the establishment and maintenance of variance accounts required for the purposes of this Act.

Conflict with market rules and codes
(3) In the event of a conflict, a regulation made under subsection (2) prevails over the market rules to the extent of the conflict and prevails over a code issued by the Board under section 70.1 of the *Ontario Energy Board Act, 1998* to the extent of the conflict.

3. The term "any related regulations" in sections 1.1.2 and 1.2.1 of Chapter 9 is not a defined term and therefore may be interpreted quite broadly (i.e. any settlement related to the Ontario Rebate for Electricity Consumers Act could be 'related' to the Electricity Act of the Ontario Energy Board Act.)

Thanks,
Rebecca

From: Jo Chung
Sent: March 19, 2018 9:07 AM
To: Jeannette Briggs
Cc: John Rattray; Michael Boll; Rebecca Short
Subject: FW: Market Rules Question on Default Levy

Jeannette,

Please find below the relevant market rule sections which give the IESO the authority to issue a default levy for charges based on Regulations, such as the global adjustment.

In summary:
- Ch 2 section 8 specifies "any amounts owing to the IESO under the market rules" shall be recovered by the IESO via a default levy for amounts not paid in full by a defaulting MP;
- Section on the calculation of a default levy uses Ch 11 definition of "*invoice*" which contains "*settlement amount*," which is defined as any amount to be paid by an MP in accordance with Chapter 9;
- Chapter 9, section 1.2.1 contains the existing overarching rule which allows settlement of charges based on Regulations (note: MR-00434: Regulated Settlement – Deletion of Rural and Remote Settlement and Debt Retirement Charge is a current market rule amendment file that provides further clarification on the IESO's authority to bill amounts based on Regulations within existing section 1.1.2 of Ch 9)

Ch 2 section 8 – Default Levy:

8.1.1 The *IESO* shall be entitled to recover, by means of the imposition of a *default levy* on *non-defaulting market participants,* in accordance with this section 8, the aggregate of any amounts owing to the *IESO* under the *market rules* which have not been paid in full by the *defaulting market participant* and the costs and expenses reasonably incurred by the *IESO* in investigating the default in payment, in realizing on any applicable *prudential support* and in implementing the *default levy*.

8.3 Calculation of Default Amount and First Default Levy

8.3.1 For the purposes of section 8.2.3.3, the *market participant's default amount* shall be the aggregate of:

8.3.1.1 the net *invoice* amount payable by the *defaulting market participant* for the *billing period* in respect of which payment has not been received within the time specified in section 8.2.2, exclusive of any amounts payable on account of financial penalties or damages;

Chapter 11 Definitions

invoice means an invoice from the *IESO* to a *market participant* which sets forth a *settlement amount*;

settlement amount means any amount of money to be paid by or to a *market participant*, determined in accordance with Chapter 9;

Ch 9 section 1.2.1 – overarching rule which allows settlement of charges based on Regulations

1.2 Regulated Settlement Amounts and Related Payment Charges

1.2.1 Notwithstanding any other provision within the *market rules*, the *IESO* shall, with respect to determining, collecting and remitting applicable *settlement amounts*, comply with the relevant provisions of the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, and any related regulations, as amended from time to time.

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