

Message

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]
Sent: 2017-05-23 7:48:53 PM
To: Michael Boll [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4811917e15054407b665fe16d12ff415-Michael Bol]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]
CC: Huang, Jackson (MEDG/MRIS) [Jackson.Huang@ontario.ca]
Subject: RE: Fair Hydro Act Motions Consultation (May 23 2017) (3).docx

Hi Michael, just by way of background on the new s. 40.1, OPG said that they need a standing and remedies clause. They relied on an SCC case for the proposition that the ability to sue under a statute isn't clear and may not be allowed, absent a specific right (I can't put my finger on it, but presumably Torys could give you the name). They modelled their initial thinking on the OBCA oppression remedy, which we didn't think was entirely appropriate (see their comments from April 26, 2017 on Version 4). We made a conscious effort to narrow the provision and clarify the circumstances in which it would apply.

We would be happy to consider a markup of that motion, particularly something could go to OPG. We are a bit in the middle on this issue.

Carolyn

From: Michael Boll [mailto:Michael.Boll@ieso.ca]
Sent: May-23-17 5:07 PM
To: Rehob, James (ENERGY)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)
Subject: RE: Fair Hydro Act Motions Consultation (May 23 2017) (3).docx

Hi James,

Thank you for providing this to us to review and comment.

Our only substantive comment relates to Motion 14 proposing a new section 40.1. We do not believe that the proposed new section is necessary. Any affected person can bring a proceeding in the Superior Court to enforce compliance with a statute/reg and to obtain injunctive relief, or to seek damages; and the Courts of Justice Act along with section 14.05(d) of the Rules of Civil Procedure expressly authorize persons to commence proceedings by "application" to determine rights pursuant to the interpretation of a statute or regulation. What we find particularly troubling is the proposed new section 40.1 (c). It is unclear what compensation (as opposed to simply mandatory/prohibitory injunctive relief) an investment asset owner could seek from the IESO or LDCs. There are no parameters provided governing what is being compensated for, or setting limits as to what the compensation might be.

A couple drafting observations for you to consider are that (i) the new proposed section 20 (1) 1, references the concept of "financing costs". This is not the same as "finance amount" and in the absence of defining this new term, it is not clear what it relates to; and (ii) Motion 7 references the replacement of subsection 18 (1), however, there is no subsection 18 (1) and therefore; it should propose the addition of subsection (1) to replace section 18.

Regards,
Michael

From: Rehob, James (ENERGY) [mailto:James.Rehob@ontario.ca]
Sent: May 23, 2017 11:47 AM

To: Michael Boll

Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Huang, Jackson (MEDG/MRIS)

Subject: Fair Hydro Act Motions Consultation (May 23 2017) (3).docx

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May 23, 2017

Hi, Mike. Please find attached the consultation draft of the Government's proposed motions (draft). We are aiming to finalize by end-of-day today or midday tomorrow, latest. Your comments by eod today or tomorrow morning would be very much appreciated.

We are also intending on sharing this document with OPG/Tory's and the OEB.

Best,

James

James P. H. Rehob

Senior Counsel

Ministry of the Attorney General

Legal Services Branch

MAG Civil Law Division

Ministry of Energy, Ministry of Economic Development and Growth, Ministry of Research, Innovation and Science,

Ministry of Infrastructure, Accessibility Directorate of Ontario

56 Wellesley Street West

Toronto, ON M7A 2E7

Tel: 416-325-6676

Fax: 416-325-1781

james.rehob@ontario.ca

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