FW_ ASC Letter.pdf

From:	Thouin, Alena (ENERGY)
To:	KRANE, JOSHUA
Subject:	FW: ASC Letter
Date:	October 13, 2017 1:42:00 PM
Attachments:	K. Evans Oct 2017 response to ASC re OFHP ads--Feasby.docx

Hi Joshua
Please see attached Karen's draft letter.
I would like to combine yours and hers together. In a more succinct format.

Let's discuss today if you have time.

Would 3pm work for you?

From: Evans, Karen (ENERGY)
Sent: October 12, 2017 4:16 PM
To: Murray, Maud (ENERGY); Thouin, Alena (ENERGY)
Cc: Cusimano, Jo-Anne (ENERGY); Lyon, Sam (ENERGY); Barbaro, Rachel (ENERGY)
Subject: ASC Letter

Hi Maud and Alena
I hope all is well and Alena, I hope your teeth feel better.

I have created a new letter to send to the ASC which attempts to explain out the 25% FHP reduction, why the system is more affordable and why we believe it is more reliable and planned better. I opted for a letter so that the ASC might be able to lift elements from it in order to respond to complainants.
I'm not sure that this is the right approach from a legal perspective. You may need to redesign it into a better format for your use with the ASC.
I have not run it through policy yet. I wanted to get feedback from you first in case you feel I'm too far off in the weeds.

Let me know your thoughts/advice.
Tx
Karen

Karen Evans
Director, Communications Branch
Ontario Ministry of Energy
4th Floor, Hearst Block, Queen's Park
900 Bay Street, Toronto, ON M7A 2E1
O: 416-327-6541 C:416-705-9637

K. Evans Oct 2017 response to ASC re OFHP ads.pdf

Ministry of Energy

Communications Branch
4th Floor, Hearst Block,
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6541

Ministère de l'Énergie

Direction des Communications
4e étage, Édifice Hearst,
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6541

DRAFT

October XX, 2017

Ms Janet Feasby
Vice President, Standards
Advertising Standards Canada
175 Bloor Street East
South Tower, Suite 1801
Toronto ON M4W 3R8

Dear Ms Feasby:

Re: Ref. #142792, 142861 & 142892 – Government of ON – Fair Hydro Plan - Radio Advertisement

Thank you for your follow-up letter of September 25, 2017, regarding the advertising of Ontario's Fair Hydro Plan (OFHP).

As I stated in my September 19, 2017 letter to you, the referenced radio advertisements do not contain any inaccurate, deceptive or misleading statements or claims. However, I welcome this opportunity to further address the three key concerns raised by consumers—electricity system reliability, affordability and energy planning.

1. Ontario's electricity system is now more reliable

In 2003 and 2004, Ontario's electricity planner, the Independent Electricity System Operator (IESO), warned of shortfalls in generation supply against the demand created by consumers and businesses in a stronger economic environment. Transmission and utility distribution infrastructure was aged past its useful life and failing. There was also concern that nuclear units being refurbished would not return to service in time to meet summer peak usage times.

Since 2003, heavy investment has been made to our transmission and distribution grid, Ontario has invested in clean generation and conservation, and in 2014 closed Ontario's last coal-fired power plant. More than $70 billion has been invested in system modernization, including the following:

- New electricity supply has been added to the grid, and new natural gas infrastructure is planned to support reliability in northern and rural communities as directed through government policy initiatives.

- Government policy also gave rise to programs and incentives to increase the amount of generation in the marketplace from renewable sources; examples include the contracting of X MW of new generation added to the grid as of 2016, the introduction of the Feed-in Tariff and MicroFit programs to encourage new and smaller scale generator participation, the addition of new embedded generators and, of course, conservation programs.

- Greater competition has been brought to the electricity market allowing new generators to participate, to encourage market pricing and add electricity as a backstop should power be in short supply.
- New interties have been created with surrounding jurisdictions including Manitoba, Michigan, Minnesota, New York and Quebec to backstop tight supply situations for Ontario and surrounding markets.
- Codes and standards have been updated to increase efficiency in our homes and in business operations, so less power is needed overall.

Recent reports from the province's electricity planners, now support a positive supply position, meaning there is enough generation in Ontario to meet the expected demand. In 2015, Ontario had eight gigawatts more capacity than we did in 2005. And, we produced four terawatt-hours more power in 2015 than we did in 2005, with 90 per cent coming from non-greenhouse gas emitting sources thanks to the phase-out of coal production and the addition of renewably sourced generation.

2. Electricity bills, and the system, are now more affordable

Ontarians are now benefiting from the years of investment we have made in the province's system. But, our investments have come at a cost. And consumers let us know that their monthly electricity costs were too high. In spring 2017, Ontario took action by introducing new legislation to lower rates and make electricity more affordable.

Electricity customers in Ontario are now seeing reduced bills as part of the Ontario Fair Hydro Plan, which, as of July 1, lowers bills by 25 per cent on average for residential consumers and will hold increases to the rate of inflation for four years. The plan also includes cost reductions for farms and businesses as well as increased support – as much as 30 to 40 per cent –for rural and remote customers. On-reserve First Nations customers and vulnerable Ontarians are seeing even greater reductions.

The plan includes the refinancing of a portion of the Global Adjustment (GA--which accounts for the fixed costs of running Ontario's generation fleet as well as the cost of conservation programs), shifting the cost recovery for electricity support programs from electricity bills to provincial revenues, and an eight per cent rebate that was introduced in January.

Refinancing a portion of the GA is providing consumers with significant and immediate rate relief (a 15 per cent reduction to the Electricity line on hydro bills); shifting social supports formerly funded through rate payers on the Regulatory Charges bill line- the Ontario Electricity Support Program and the Rural or Remote Rate Protection program - to the tax base results in an approximate two per cent reduction. When combined with the eight per cent rebate, the result is a 25 per cent average bill reduction for residential consumers, which is making a real difference in household budgets. For greater clarity, the Ontario Energy Board (OEB) determined and reported that the rates effective July 1, 2017 under Ontario's Fair Hydro Plan (OFHP) resulted in an average monthly bill of $121, which is 25 per cent lower than the $162 bill that would have been in place absent the OFHP.

The affect of the refinancing means that today's Ontario electricity rate payers will share the costs of existing electricity investments more fairly with future generations by spreading the cost of the investments over a longer period of time. And when you consider that there are approximately 4.5 million electricity bill payers versus approximately 11 million tax payers[check], where social program costs are shifting to the tax base, they will be shared at a much lower per payer cost.

We will continue to work to find savings wherever possible now to limit the long term costs of this refinancing. This commitment is also embedded in the Fair Hydro Plan legislation.

The government has already been working hard to mitigate electricity system costs through actions such as amending the Green Energy Investment Agreement, reducing Feed-in Tariff prices, introducing a competitive process for procuring power from large renewable energy projects and deferring the construction of new nuclear units. These actions have resulted in billions of dollars in savings.

As I noted in my previous letter, the time limitation of the radio advertisement did not allow for the inclusion of all OFHP details; therefore, the call to action directed listeners to our dedicated webpage to learn more.

3. Planning continues to be essential to a clean, reliable and affordable energy future

The government produced Long-Term Energy Plans (LTEP) in 2010 and 2013, and will release an updated plan in 2017. The LTEP balances the objectives of cost-effectiveness, reliability, clean energy, community and Indigenous participation and engagement, and an emphasis on conservation and demand management.

The 2017 LTEP will focus on continuing to take additional costs out of the electricity system. Ontario has a robust energy supply and is in a good position to improve efficiency, increase transparency, and enhance opportunities for innovation and competition to reduce system costs.   For example, the IESO's Market Renewal initiative will result in meeting future system needs at the lowest cost by creating a more efficient marketplace with competitive and transparent mechanisms. The project is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term.

Ontario is committed to keeping electricity rates affordable while maintaining a clean, modern and reliable electricity system that reduces greenhouse gas emissions and provides cleaner air for this and future generations.

I trust that this information will be helpful in addressing consumers' complaints.

Sincerely,

Karen Evans
Director

c:	Laurie Sloan, Managing Director, Advertising Review Board

DRAFT

DRAFT

FW_ Advertising expertise(1).pdf

From:	TSENG, ALICE
To:	Thouin, Alena (ENERGY)
Subject:	FW: Advertising expertise
Date:	October 11, 2017 10:36:04 AM
Attachments:	142128 – Government of ON – Hydro Rates Reduced by 25% – Radio Ad - 2Wk.....pdf Response to Advertising Standards Canada re OFHP advertisingMay16 Clean.....docx

---

Alice Tseng
Partner
alice.tseng@blakes.com
Dir: 416-863-3067

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Tuesday, May 16, 2017 2:11 PM
To: TSENG, ALICE; WILSON, JUDY
Cc: DICKS, LINDSAY
Subject: RE: Advertising expertise

Hi Alice - this is the notice. I have also attached the draft response. It would be most helpful if you could you call me once you've taken a look, please. Thanks so much.

Carolyn

Carolyn Calwell
Legal Director
MAG Civil Law Division
Ministries of Energy / Economic Development & Growth / Research, Innovation & Science / Infrastructure / Accessibility
416-212-8392

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-----Original Message-----
From: TSENG, ALICE [mailto:ALICE.TSENG@blakes.com]
Sent: May-16-17 2:05 PM
To: WILSON, JUDY; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: DICKS, LINDSAY
Subject: RE: Advertising expertise

Hi Carolyn, could you forward the notice to me please? Thanks.

Best,

Alice Tseng
Partner

alice.tseng@blakes.com
Dir: 416-863-3067

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
http://www.blakes.com | http://twitter.com/BlakesLaw |
http://www.blakes.com/English/Resources/Bulletins/Pages/unsubscribe.aspx

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-----Original Message-----
From: WILSON, JUDY
Sent: Tuesday, May 16, 2017 1:28 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: TSENG, ALICE; DICKS, LINDSAY
Subject: RE: Advertising expertise

Hi Carolyn, the right person to talk to is Alice Tseng who I have copied. I have given her a quickie briefing on the electricity program, but just a few quick words.
J

Judy Wilson
Partner
judy.wilson@blakes.com
Dir: 416.863.5820

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: May-15-17 7:41 PM
To: WILSON, JUDY
Subject: Advertising expertise

Hi - do you have someone who could talk to me about responding to notice of a complaint to the Standards Council. It relates to radio ads about the 25%. I just want to get a sense of what to expect. Tomorrow is fine - not required tonight.

Carolyn

142128   Government of ON   Hydro Rates Reduce.pdf

ASC NCP Advertising Standards Canada
Les normes canadiennes de la publicité

175 Bloor Street East
South Tower, Suite 1801
Toronto, Ontario M4W 3R8

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Tour Sud, bureau 1801
Toronto (Ontario) M4W 3R8

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416 961-7904
www.normespub.com

Confidential

Via email: Laurie.Sloan@ontario.ca

May 4, 2017

Lorie Sloan
Managing Director ARB
Toronto, ON

Dear Ms. Sloan:

Re: Our Ref #142128 – Government of ON – Hydro Rates Reduced by 25% – Radio Advertisement

The attached complaint has been filed with Advertising Standards Canada (ASC) regarding the above-referenced advertising. As the national advertising self-regulatory body ASC accepts, adjudicates and reports on consumers' complaints about advertising.

We would appreciate receiving a copy of the advertising and your comments on the merits of this complaint by May 18, 2017. ASC will then review this matter under Clause 1 (Accuracy and Clarity) of the *Canadian Code of Advertising Standards, (Code)* available at: adstandards.com/en/Standards/theCode.

If, after reviewing your response, ASC identifies a potential *Code* issue, the case may be ***Administratively Resolved*** or referred for ***Standards Council Adjudication.***

➢ ***Administratively Resolved Complaints***
ASC may resolve a case that involves an apparent contravention of Clauses 1 and/or Clause 3 if the advertiser:
- Permanently withdraws or appropriately amends the advertisement before or immediately upon being advised of the complaint by ASC, and for retail advertising, also publishes/posts a correction notice*.

ASC does not publish case reports for ***Administratively Resolved*** cases.

➢ ***Standards Council Adjudication***
If the advertiser does **not** acknowledge the infraction and withdraw or appropriately amend the advertisement, ASC will forward the case to the independent volunteer Standards Council for adjudication. If the Standards Council finds the advertisement contravenes the *Code,* the advertiser will be requested to appropriately amend or permanently withdraw the advertising.

Publication of Standards Council Adjudications
ASC publishes case summaries of complaints upheld by the Standards Council in its online *Ad Complaints Reports*. Whether or not an advertiser is named depends on the advertiser's response to ASC and Council.

1. "**Non-identified Cases**" In these cases, the advertiser withdrew or appropriately amended the advertising before Council met to adjudicate the complaint. In addition, for retail advertising, the advertiser published/ posted a correction notice*****.

2. "**Identified Cases"** In these cases, the advertiser did not withdraw or appropriately amend the advertising before Council met to adjudicate the complaint. In addition, for retail advertising, the advertiser did not publish/post a correction notice***.**

***Code* Requirement for Correction Notices for Retail Advertising**
For retail advertising, in addition to withdrawing or appropriately amending the advertisement, the *Code* requires the advertiser to publish/post a correction advertisement in the same medium and addressed to the same consumers to whom the original advertisement was directed.

Please feel free to contact me if you have any questions about the *Code* or the procedure that will be followed.

We look forward to receiving your comments regarding this complaint and your intentions with respect to this advertising.

Yours sincerely,

Janet Feasby
Vice President, Standards

Janet.feasby@adstandards.com
Phone: 416-961-6311, extension 243

Enclosure

Cc: Sharon Mennie, Sr. Communications Advisor

Advertising Standards Canada has received your e-Complaints Submission as summarized below. We will review your submission carefully and respond to you shortly. If you have any questions or comments regarding this submission, please respond by reply e-mail.

Thank you for using the e-Complaints Response System.

ASC Reference # 142128

Your Information

Mr. k vreeken,
135-260 adelaide st e
toronto Ontario M5A 1N1, Canada
kv5858@gmail.com

Advertisement Information

Advertiser:	ontario government
Product/Service:	hydro
Ad Language:	English
Where Seen:	radio (hard to see)
When Seen:	never (remember, it was on the radio)
Attachments:	

Description of advertisement:

recently i heard a commercial on a local radio station (cftr am 680) that said hydro rates were being reduced by 25%. this is not true and it is not happening. hydro rates are being reduced by 17%. the extra 8% mentioned in the ad is being factored in by the reduction in the provincial portion of the hst being removed. this too is deceptive as the clean energy rebate of 10% expired therefore resulting in a 2% increase in rates at the time the hst was removed. i would like this deceptive advertising to stop. please advise.

Your concern

recently i heard a commercial on a local radio station (cftr am 680) that said hydro rates were being reduced by 25%. this is not true and it is not happening. hydro rates are being reduced by 17%. the extra 8% mentioned in the ad is being factored in by the reduction in the provincial portion of the hst being removed. this too is deceptive as the clean energy rebate of 10% expired therefore resulting in a 2% increase in rates at the time the hst was removed. i would like this deceptive advertising to stop. please advise.

You have given consent to ASC to disclose to the advertiser your name and contact information together with your complaint in case the advertiser wishes to contact you directly.

You have acknowledged and accepted the following terms of service.

ASC cannot process consumer complaints from persons who are affiliated or associated in any way with a competitor of the advertiser or any of the advertiser's advertising/promotion agencies. By acknowledging and accepting these terms where indicated below, you confirm that neither you nor any member of your household/family has any direct or indirect affiliation or association with a competitor of the advertiser or any of the advertiser's advertising/promotion agencies.

Important notice: The information contained in this e-mail is privileged and confidential. It is intended only for the person or entity named above and should not be read by or disclosed to any other person or entity. If you are not the intended recipient of this communication, please notify the sender immediately at 416-961-6311 or by reply e-mail. Thank you in advance for your cooperation.

For more information please visit our website at www.adstandards.com

MOE Radio Scripts
AS RECORDED ENGLISH

Title: Fair Hydro Plan 1 –
Code: MOE-002-30RE1

Starting this Summer, households in Ontario will receive an average of 25 percent off their hydro. And your bill won't increase beyond the rate of inflation for at least 4 years.

We've heard you. Hydro needs to be fair for everyone across the province and we have made fundamental changes to ensure this in the long term.

Find out more about your reduction at Ontario.ca/FairHydroPlan.
Paid for by the Government of Ontario.

Title: Fair Hydro Plan 2 –

Code: MOE-002-30RE3

Ontario has made important investments in clean, reliable energy. This has led to hydro bills that have become harder to pay.

We've heard you and we're taking action with the Fair Hydro Plan.

Starting this Summer, households will receive an average of 25 percent off their bill – and bills won't increase beyond the rate of inflation for at least 4 years.

Find out more at Ontario.ca/FairHydroPlan.
Paid for by the Government of Ontario.

ALT CTA LINES

Title: Fair Hydro Plan 1 –
Code: MOE-002-30RE1

Starting this Summer, households in Ontario will receive an average of 25 percent off their hydro.
And your bill won't increase beyond the rate of inflation for at least 4 years.

We've heard you. Hydro needs to be fair for everyone across the province and we have made fundamental changes to ensure this in the long term.
(Alt) See how much 25 percent off will save you at Ontario.ca/FairHydroPlan.
Paid for by the Government of Ontario.

Title: Fair Hydro Plan 2 –

Code: MOE-002-30RE3

Ontario has made important investments in clean, reliable energy. This has led to hydro bills that have become harder to pay.

We've heard you and we're taking action with the Fair Hydro Plan.

Starting this Summer, households will receive an average of 25 percent off their bill – and bills won't increase beyond the rate of inflation for at least 4 years.

(Alt) See how much you will save at Ontario.ca/FairHydroPlan.
Paid for by the Government of Ontario.

Response to Advertising Standards Canada re O.pdf

Ministry of Energy

Communications Branch
4th Floor, Hearst Block,
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6541

Ministère de l'Énergie

Direction des Communications
4e étage, Édifice Hearst,
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6541

Ontario

May 15, 2017

Ms. Janet Feasby
Vice President, Standards
Advertising Standards Canada
175 Bloor Street East
South Tower, Suite 1801
Toronto ON M4W 3R8

Dear Ms. Feasby:

Re: Ref. #142128 – Government of ON - Hydro Rates Reduced by 25 per cent - Radio Advertisement

The above complaint was forwarded to me by Laurie Sloan at the Advertising Review Board on May 4, 2017. As requested, attached is a copy of the radio advertisements as recorded. Below you will find our comments on the merits of this complaint raised regarding advertising of Ontario's Fair Hydro Plan (OFHP).

The complaint objected to the Province's assertion in its spring 2017 radio advertising that electricity bills would be lowered by 25 per cent as a result of the OFHP. The complaint states that the 25% reference is misleading because it is inclusive of an 8% rebate that is already in place. The complaint also notes that the Ontario Clean Energy Benefit (OCEB) has expired and resulted in an increase to bills.

The radio buy for the complained of advertisements ended on April 28, 2017 and the radio ads are no longer running. They are not intended to be used again.

The Consumer Complaint Procedure requires consumers wishing to complain to identify the product or service being advertised. The advertising in this case relates to a policy or program, within the definition of "Government Advertising" in the Code. We therefore respectfully submit that the advertising in question does not relate to a product or service and the Consumer Complaint Procedure does not apply in this circumstance.

In light of the fact that the complained of advertising is now concluded, and because that advertising does not relate to a product or service to which the Consumer Complaint Procedure applies, we ask that the Advertising Standards Council (ASC) use its administrative discretion to resolve this case without requiring formal adjudication by the ASC.

If the Consumer Complaint Procedure does apply in the circumstances, and the conclusion of the advertising campaign does not resolve the complaint, then we submit that the advertisement does not contravene the Code and there are no reasonable grounds for the complaint. The OFHP is a new, multi-pronged program aimed at reducing hydro bills by an average of 25 per cent for residential consumers. The OFHP as announced on March 2, 2017 included the following components:

- Deferral of a portion of the costs associated with the global adjustment. The government has also committed to holding increases in bills to the rate of inflation for four years.
- An eight per cent rebate equivalent to the provincial portion of the HST which was introduced in January.
- Enhancements to the Rural or Remote Electricity Rate Protection (RRRP) program, to be funded from provincial revenues, resulting in rate savings for electricity consumers.
- Expansion of the Ontario Electricity Support Program and funding of that program by government revenues instead of ratepayers. As of May 1, 2017, more people are eligible for the program and credits have increased by up to 50 per cent.
- Introduction of the Affordability Fund to assist homeowners with energy efficiency initiatives.
- Creation of a new First Nation's on-reserve delivery credit.

The Province launched an advertising campaign to support this program on March 13, 2017. The message introducing the proposed OFHP was communicated through multiple media channels, intended to reach a wide ranging audience and to convey the multi-faceted elements of the program outlined above.

Communications included the 30 second radio spots as well as digital display ads, news media outreach, announcements from the Premier of Ontario and the Minister of Energy, as well as a unique webpage dedicated to the OFHP. The 30 second radio spots were intended to generate interest in the OFHP and direct people to sources for more information.

The mediums that allowed for more content elaborated on the details of the OFHP and also included language indicating that the 8 per cent rebate was included in the 25 per cent reduction.

The radio advertisement's inherent audio-only format, as well as the limited 30 seconds of the ad unit, did not allow for inclusion of all details of the OFHP in this single medium. The radio spot contained a call to action that directed listeners to our dedicated webpage to "Find out more about your reduction at Ontario.ca/FairHydroPlan."

Further, the statement in the media release posted on Ontario.ca and announcements made to media included the following*:*

> *"Starting this summer, Ontario's Fair Hydro Plan would provide households with this 25 per cent break. Many small businesses and farms would also benefit from the initiative. People with low incomes and those living in eligible rural communities would receive even greater reductions to their electricity bills. As part of this plan, rate increases over the next four years would be held to the rate of inflation for everyone. These measures include the eight per cent rebate introduced in January and build on previously announced initiatives to deliver broad-based rate relief on all electricity bills."*

The 25 per cent break is relative to the costs that residential consumers would have paid without the OFHP and all of its components. To that end, it is useful to clarify what is not part of the OFHP. In response to the statement in the complaint regarding the end of OCEB combined with the more recent eight per cent rebate resulted in a two per cent increase in bills, we note that OCEB was a five-year temporary program that ended, as planned and communicated by the government, on December 31, 2015. The OCEB was introduced to help families, farms and small businesses manage their costs during our transition from coal-fired electricity generation towards a clean, modern and more reliable electricity system. The *Ontario Clean Energy Benefit Act, 2010* clearly established that the program would run from January 1, 2011 to December 31, 2015. The OCEB was never part of the Fair Hydro Plan or the communications associated with it.

We therefore respectfully submit that the media campaign, with all of the mediums used, fairly and honestly described the OFHP. We trust that the above comments regarding the complaint will assist the ASC to understand the truth, accuracy and suitability of this radio advertisement, should the complaint procedure apply in this circumstance. We would also like to take this opportunity to advise that additional advertising for the OFHP is planned to commence this summer, including radio advertising that will use a new script.

Please let us know if you have any further comments or questions.

Sincerely,

Karen Evans or TBD
Director

c: Laurie Sloan, Managing Director, Advertising Review Board

FW_ Advertising expertise.pdf

From:	TSENG, ALICE
To:	Thouin, Alena (ENERGY)
Cc:	Murray, Maud (ENERGY)
Subject:	FW: Advertising expertise
Date:	October 11, 2017 10:37:36 AM
Attachments:	23134970-v2-BCG Comments - Response to Advertising Standards Canada re OFHP advertisingMay16 Clean.....DOCX

-----Original Message-----
From: TSENG, ALICE
Sent: Wednesday, May 17, 2017 10:01 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: KRANE, JOSHUA
Subject: RE: Advertising expertise

Hi Carolyn, we didn't make too many substantive changes (despite what it looks like!) but rather re-ordered things etc. I will call you in a few minutes. Thanks.

Alice Tseng
Partner
alice.tseng@blakes.com
Dir: 416-863-3067

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Tuesday, May 16, 2017 8:22 PM
To: TSENG, ALICE
Subject: Re: Advertising expertise

Sounds great.

Original Message
From: TSENG, ALICE
Sent: Tuesday, May 16, 2017 8:13 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: Advertising expertise

Understood. Thanks Carolyn. I'll call you at 10 am.

Alice Tseng
Partner
alice.tseng@blakes.com
Dir: 416-863-3067

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Tuesday, May 16, 2017 5:51 PM
To: TSENG, ALICE
Subject: RE: Advertising expertise

Thanks, Alice. Yes, I can chat any time after 9:45. Because of the process we have to go through for approvals, we won't be able to change the letter substantially at that point, but it will help me to understand what the Council considers and what we might expect in terms of next steps.

-----Original Message-----
From: TSENG, ALICE [mailto:ALICE.TSENG@blakes.com]
Sent: May-16-17 5:10 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: Advertising expertise

Thanks Carolyn. Would you be free to chat tomorrow am? My schedule tomorrow is flexible. I've had calls this aft so haven't had a chance to look just yet. Thank you.

Alice Tseng
Partner
alice.tseng@blakes.com
Dir: 416-863-3067

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Tuesday, May 16, 2017 2:11 PM
To: TSENG, ALICE; WILSON, JUDY
Cc: DICKS, LINDSAY
Subject: RE: Advertising expertise

Hi Alice - this is the notice. I have also attached the draft response. It would be most helpful if you could you call me once you've taken a look, please. Thanks so much.

Carolyn

Carolyn Calwell
Legal Director
MAG Civil Law Division
Ministries of Energy / Economic Development & Growth / Research, Innovation & Science / Infrastructure / Accessibility
416-212-8392

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-----Original Message-----
From: TSENG, ALICE [mailto:ALICE.TSENG@blakes.com]
Sent: May-16-17 2:05 PM
To: WILSON, JUDY; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: DICKS, LINDSAY
Subject: RE: Advertising expertise

Hi Carolyn, could you forward the notice to me please? Thanks.

Best,

Alice Tseng
Partner

alice.tseng@blakes.com
Dir: 416-863-3067

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-----Original Message-----
From: WILSON, JUDY
Sent: Tuesday, May 16, 2017 1:28 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: TSENG, ALICE; DICKS, LINDSAY
Subject: RE: Advertising expertise

Hi Carolyn, the right person to talk to is Alice Tseng who I have copied. I have given her a quickie briefing on the electricity program, but just a few quick words.
J

Judy Wilson
Partner
judy.wilson@blakes.com
Dir: 416.863.5820

-----Original Message-----
From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: May-15-17 7:41 PM
To: WILSON, JUDY
Subject: Advertising expertise

Hi - do you have someone who could talk to me about responding to notice of a complaint to the Standards Council. It relates to radio ads about the 25%. I just want to get a sense of what to expect. Tomorrow is fine - not required tonight.

Carolyn

23134970-v2-BCG Comments - Response to Advert.pdf

Ministry of Energy

Communications Branch
4th Floor, Hearst Block,
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6541

Ministère de l'Énergie

Direction des Communications
4e étage, Édifice Hearst,
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6541

Ontario

May 15, 2017

Ms. Janet Feasby
Vice President, Standards
Advertising Standards Canada
175 Bloor Street East
South Tower, Suite 1801
Toronto ON M4W 3R8

Dear Ms. Feasby:

Re: Ref. #142128 – Government of ON - Hydro Rates Reduced by 25 per cent - Radio Advertisement

Thank you for your letter which was forwarded to me by Laurie Sloan at the Advertising Review Board. As requested, attached is a copy of the radio advertisements as recorded. Below you will find our comments on the merits of this complaint raised regarding advertising of Ontario's Fair Hydro Plan ("**OFHP**").

We ask that the ASC decline to accept or proceed further with this matter and not refer the matter to a council hearing for the following reasons:

1. The advertisements were approved by an agency of the government.
2. The radio advertisements are no longer running and are not intended to be re-run in their current form.
3. Most importantly, the advertisements do not contain any inaccurate, deceptive or misleading statements or claims.

1. The advertisements were approved by the Government of Ontario

The *Canadian Code of Advertising Standards* states:

> ASC or Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that:
>
> …

23134970.2

c. the advertising, or such part of the advertising to which the complaint refers:

i.v. has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government; …

As the advertisement is a communication by an agency of the Ministry of Energy (Ontario), the ASC must decline to accept or proceed further with this complaint.

[NTD: discuss the approval process for the advertising]

It is important to note that the advertising reflects the change in pricing implemented by the Ontario Energy Board, which is an agency of the Government of Ontario. As set out on OFHP website:

> On May 1, 2017, the OEB reduced electricity rates across the province for all Regulated Price Plan (RPP) eligible customers, which included a portion of Ontario's Fair Hydro Plan. This means households, small businesses and farms will see real savings sooner than expected.
>
> If legislation is passed, the OEB would be required to lower rates again within 15 days after Royal Assent to meet the government's commitment to cut electricity bills by 25% on average for all households and as many as half a million small businesses and farms.

2. Radio advertisements are no longer in market

The OFHP is a new, multi-pronged program aimed at reducing hydro bills by an average of 25 per cent for residential consumers. The OFHP as announced on March 2, 2017 included the following components:

- Deferral of a portion of the costs associated with the global adjustment. The government has also committed to holding increases in bills to the rate of inflation for four years.
- An eight per cent rebate equivalent to the provincial portion of the HST which was introduced in January.
- Enhancements to the Rural or Remote Electricity Rate Protection (RRRP) program, to be funded from provincial revenues, resulting in rate savings for electricity consumers.
- Expansion of the Ontario Electricity Support Program and funding of that program by government revenues instead of ratepayers. As of May 1, 2017, more people are eligible for the program and credits have increased by up to 50 per cent.
- Introduction of the Affordability Fund to assist homeowners with energy efficiency initiatives.
- Creation of a new First Nation's on-reserve delivery credit.

The Province launched an advertising campaign to support this program on March 13, 2017. The message introducing the proposed OFHP was communicated through multiple media channels, intended to reach a wide ranging audience and to convey the multi-faceted elements of the program outlined above.

Communications included the 30 second radio spots as well as digital display ads, news media outreach, announcements from the Premier of Ontario and the Minister of Energy, as well as a unique webpage dedicated to the OFHP. The 30 second radio spots were intended to generate interest in the OFHP and direct people to sources for more information.

The mediums that allowed for more content elaborated on the details of the OFHP and also included language explicitly indicating that the 8 per cent rebate was included in the 25 per cent reduction.

The radio buy for the advertisements in issue ended on April 28, 2017 and those radio ads are no longer running. Those communications are not intended to be used again. However, additional advertising for the OFHP is planned to commence this summer, including radio advertising that will use a new script.

Moreover, all of the information regarding the OFHP, including how rates are set by the Ontario Energy Board, continues to be available on the Ontario.ca website.

3. The advertising does not contravene the Code

Most importantly, the advertising is accurate and is not false. The consumer's complaint was that the radio ad claimed that hydro rates were being decreased by 25% and that this was misleading because the 25% discount included the 8% rebate. However, when the radio script is actually reviewed, it is clear the ad focuses on the hydro bill for consumers being 25% less. The radio ad makes no claim that the hydro rate itself has decreased by 25%.

The radio advertisement's inherent audio-only format, as well as the limited 30 seconds of the ad unit, did not allow for inclusion of all details of the OFHP in this single medium (including the components that contribute to hydro bills being decreased by 25%). The radio spot contained a call to action that directed listeners to our dedicated webpage to "Find out more about your reduction at Ontario.ca/FairHydroPlan." This is consistent with advertising practice, where customers are directed to a website to find more information about the programs and the claims being made.

The statement in the media release posted on Ontario.ca included the following*:*

> *"Starting this summer, Ontario's Fair Hydro Plan would provide households with this 25 per cent break. Many small businesses and farms would also benefit from the initiative. People with low incomes and those living in eligible rural communities would receive even greater reductions to their electricity bills. As part of this plan, rate increases over the next four years would be held to the rate of inflation for everyone. These measures include the eight per cent rebate introduced in January and build on previously announced initiatives to deliver broad-based rate relief on all electricity bills."*

The consumer also makes reference to a clean energy rebate expiring and a 2% increase in rates when HST was removed. Please note that the energy rebate the consumer is referring to ceased in 2015 and none of that is relevant to our calculation of a 25% decrease in the amount that consumers will pay.

For the reasons set out above, we therefore respectfully submit that the ASC must decline to accept this complaint or to proceed further with this matter. Should you have further questions, we would be pleased to address them.

Sincerely,

Karen Evans or TBD
Director

c: Laurie Sloan, Managing Director, Advertising Review Board
[Copy Blakes?]

23134970-v2-BCG Comments - Response to Advert_1.pdf

Ministry of Energy

Communications Branch
4th Floor, Hearst Block,
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6541

Ministère de l'Énergie

Direction des Communications
4e étage, Édifice Hearst,
900, rue Bay
Toronto, ON M7A 2E1
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May 15, 2017

Ms. Janet Feasby
Vice President, Standards
Advertising Standards Canada
175 Bloor Street East
South Tower, Suite 1801
Toronto ON M4W 3R8

Dear Ms. Feasby:

Re: Ref. #142128 – Government of ON - Hydro Rates Reduced by 25 per cent - Radio Advertisement

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> …

c. the advertising, or such part of the advertising to which the complaint refers:

i.v. has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government; …

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[NTD: discuss the approval process for the advertising]

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> On May 1, 2017, the OEB reduced electricity rates across the province for all Regulated Price Plan (RPP) eligible customers, which included a portion of Ontario's Fair Hydro Plan. This means households, small businesses and farms will see real savings sooner than expected.
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Moreover, all of the information regarding the OFHP, including how rates are set by the Ontario Energy Board, continues to be available on the Ontario.ca website.

3. The advertising does not contravene the Code

Most importantly, the advertising is accurate and is not false. The consumer's complaint was that the radio ad claimed that hydro rates were being decreased by 25% and that this was misleading because the 25% discount included the 8% rebate. However, when the radio script is actually reviewed, it is clear the ad focuses on the hydro bill for consumers being 25% less. The radio ad makes no claim that the hydro rate itself has decreased by 25%.

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The consumer also makes reference to a clean energy rebate expiring and a 2% increase in rates when HST was removed. Please note that the energy rebate the consumer is referring to ceased in 2015 and none of that is relevant to our calculation of a 25% decrease in the amount that consumers will pay.

For the reasons set out above, we therefore respectfully submit that the ASC must decline to accept this complaint or to proceed further with this matter. Should you have further questions, we would be pleased to address them.

Sincerely,

Karen Evans or TBD
Director

c: Laurie Sloan, Managing Director, Advertising Review Board
[Copy Blakes?]

FW_ Fair Hydro Plan advertising.pdf

From:	TSENG, ALICE
To:	Thouin, Alena (ENERGY)
Cc:	Murray, Maud (ENERGY)
Subject:	FW: Fair Hydro Plan advertising
Date:	October 11, 2017 10:38:17 AM

Alice Tseng
Partner
alice.tseng@blakes.com
Dir: 416-863-3067

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Thursday, June 01, 2017 1:49 PM
To: TSENG, ALICE
Subject: RE: Fair Hydro Plan advertising

We used your draft. Thanks again.

From: TSENG, ALICE [mailto:ALICE.TSENG@blakes.com]
Sent: June-01-17 1:49 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: Fair Hydro Plan advertising

Perfect! Thanks so much for letting me know Carolyn.

Did you go with the original or updated letter?

Alice Tseng
Partner
alice.tseng@blakes.com
Dir: 416-863-3067

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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From: Calwell, Carolyn (ENERGY/MEDEI/MRI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Thursday, June 01, 2017 1:47 PM
To: TSENG, ALICE
Cc: WILSON, JUDY

Subject: Fair Hydro Plan advertising

Hi Alice – we have heard that the ASC has administratively resolved the complaint and will close its file. Thank you very much for your assistance in this regard.

Carolyn

Carolyn Calwell
Legal Director
MAG Civil Law Division
Ministries of Energy / Economic Development & Growth /
Research, Innovation & Science / Infrastructure / Accessibility
416-212-8392

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Fwd_ MOE - ASC Letter.pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY)
Subject:	Fwd: MOE - ASC Letter
Date:	October 17, 2017 1:50:01 PM
Attachments:	TOR_2528-#23223169-v2-Letter_-_ASC_re_Ontario_Fair_Hydro_Plan.docx ATT00001.htm

---

Joshua A. Krane
Partner
joshua.krane@blakes.com<mailto:joshua.krane@blakes.com>
Dir: 416-863-4187
Cell: 416-471-2068

____

[cid:imagee17b9d.GIF@bab20f8b.4894d4ed]

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Begin forwarded message:

From: "KRANE, JOSHUA" <JOSHUA.KRANE@blakes.com<mailto:JOSHUA.KRANE@blakes.com>>
Date: October 16, 2017 at 10:56:56 AM EDT
To: "Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>)" <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>
Subject: Re: MOE - ASC Letter

Privileged and Confidential

Hi Alena,

Attached is a draft letter that attempts to marry my initial outline with the draft that Karen prepared on Friday.

A few draft notes for your consideration are highlighted in yellow.

Please let me know if you would like to discuss.

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com<mailto:joshua.krane@blakes.com>
Dir: 416-863-4187
Cell: 416-471-2068

TOR_2528-#23223169-v2-Letter_-_ASC_re_Ontario.pdf

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Joshua A. Krane
Partner
Dir: 416-863-4187
joshua.krane@blakes.com

October **[25]**, 2017

Reference: 14229/1

VIA E-MAIL
CONFIDENTIAL

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

PRIVILEGED AND CONFIDENTIAL – DRAFT

Dear Mr. Engle:

ASC Ref. # 142792, 142861 and 142892 – Fair Hydro Plan

We are writing in response to Janet Feasby's letter of September 25, 2017 and our call with you and Ms. Feasby of October 3, 2017. The Ministry of Energy would like to assure the ASC that its advertising is intended to inform Ontarians about the substantial benefits of new legislation designed to reduce hydro bills for residential consumers and is in no way intended to mislead consumers about the Fair Hydro Plan Program ("**Program**"). To ensure that the Ministry addresses the ASC's concerns in a satisfactory manner, the Ministry has temporarily withdrawn the claims per our email exchange of October 5, 2017. Despite these temporary measures, the Ministry stands behind the truthfulness of the messaging and intends to continue communicating with Ontarians about the benefits of the Program once this matter is resolved.

A. SUMMARY OF THE ISSUES

As a preliminary matter, the Ministry's position is that, with the exception of the complaint related to the improved reliability of Ontario's electricity system, the two other complaints – i.e., pertaining to the 25% reduction of household electricity bills and bill affordability – are "non-reviewable" in accordance with the ASC's *Consumer Complaints Procedure* ("**Procedure**"). As explained in more detail below, the regulations under the *Ontario Fair Hydro Act, 2017* (the "**Act**") specifically authorize the making of these claims.[1] Additionally, the regulations require electricity suppliers to make such claims on their invoices and on bill inserts. Thus, it would be inconsistent with the regulations for the ASC to declare that the Ministry amend or withdraw advertising containing the very claims that the elected representatives of the Ontario Legislature and Cabinet have required electricity suppliers to make. On this basis alone, the ASC should reconsider whether it is appropriate to pursue these complaints further.

[1] *Ontario Fair Hydro Plan Act, 2017*, S.O. 2017, c. 16, Sched. 1, online: https://www.ontario.ca/laws/statute/17o16.

23223169.2

On our October 3, 2017 call, you indicated that the ASC received complaints in respect of three specific claims:

1) “Household electricity bills will be an average of 25% less” (“**25% reduction claim**”);

2) “Recent changes have made bills more affordable” (“**affordability claim**”); and

3) “Upgrades to our [Ontario’s] electricity system have made it more reliable for Ontarians” (“**reliability claim**”).

None of these claims contravenes the *Canadian Code of Advertising Standards*. In brief, and as discussed in more detail below:

1) The 25% reduction claim is accurate and does not contravene section 1(a) of the Code.

- The Act and accompanying regulations task the Ontario Energy Board (“**Board**”) to take measures to ensure that an average residential consumer receives an invoice that is 25% less than the consumer would have received in the absence of the Program.

- The Board implemented a number of measures to reduce consumer invoices, including: 1) lowering time-of-use prices (electricity rates), 2) removing the fees associated with electricity support programs, and 3) granting an 8% rebate for the provincial portion of the HST.

- As a result of these measures, the average consumer now receives a monthly bill of $121, which is 25% lower than the $162 bill that the consumer would have received absent the program.

2) The affordability claim does not contravene section 1(b) of the Code since it is properly qualified and does not omit relevant information about long term costs.

- Contrary to the complaint, the representation in issue actually states: “Recent changes have made electricity bills more affordable. By this summer, household electricity bills will be an average of 25% less, <u>and electricity rates won’t increase beyond the rate of inflation for four years</u>.” The time limitation for the affordability claim is clear: rate increases will be held to inflation for four years.

- The Government is not under any obligation to include in its advertising what might happen after four years, just like any other advertiser that advertises new, lower prices on a product or service. The advertiser is free to choose whether to subsidize the lower prices from current or future revenues and is under no obligation to disclose this to the public.

- Furthermore, the Government has taken additional steps to reduce electricity bills in the short term and system costs in the long term by implementing programs to support farms, businesses and consumers on First Nations reserves, implementing more competitive procurement programs and deferring new plant construction, and enhancing the efficiency of the electricity market.

3) The reliability claim is supported by competent and reliable evidence and thus does not contravene section 1(e) of the Code.

- Since 2003, the Government has invested more than $70 billion in clean generation, conservation and improving Ontario's transmission and distribution grid. As a result, **[NTD: insert statistics demonstrating that the electricity generation and distribution system is more reliable today. See draft note in Section 3 below]**

B. DISCUSSION

Preliminary Issue: The 25% reduction claim and the affordability claim are non-reviewable complaints under the Procedure.

Under the Procedure, the "Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that: the advertising, or such part of the advertising to which the complaint refers … has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government." Although the Procedure does not define the term "Canadian Government", we understand that the ASC's position is that the provision is intended to apply to situations where the advertisement has been authorized by a government entity and thus could not, under law, be found to be false or materially misleading.

The Ministry's view is that the ASC should declare that the complaint is non-reviewable since the claims in issue have been specifically authorized by regulations promulgated by the Province's elected representatives.

By way of background, on June 1, 2017, Bill 132 (the Act) received Royal Assent and entered into force. Section 7 of the Act requires that the Board take measures to ensure that the average consumer receives an invoice that is 25% less than the consumer would have received in the absence of the Program. Section 11 of the Act authorizes the provincial Cabinet to make regulations that set out the applicable methodologies for reducing a consumer's bill.

Ontario Regulation 195/17: *Fair Adjustment under Part II of the Act* ("**Fair Adjustment Regulation**") explains how the reduction in the invoiced amount is to be achieved. Section 3 of the Fair Adjustment Regulation requires that the total invoice paid by the average consumer must be 25% lower than the invoice would have been absent the adjustment by the Board.

> **Regulated rate consumers, first fair adjustment under s. 7 of the Act**
>
> 3. For the purposes of section 7 of the Act, the Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the

electricity included in Total Invoice Amount B, result in Total Invoice Amount B being 25 per cent less than Total Invoice Amount A.

In a separate regulation, Ontario Regulation 196/17: *Invoicing Requirements* ("**Invoicing Requirements Regulation**"), Cabinet specifically mandated the use of certain statements on electricity bills. Section 1 of the Invoicing Regulation states that invoices must include the following statement:

> *"Ontario's Fair Hydro Plan substantially lowers electricity bills for typical residential consumers. This includes the eight per cent rebate introduced in January 2017, and builds on previous initiatives to deliver broad-based relief on all electricity bills."*

Section 2 requires that paper invoices must include bill inserts that feature the following statements in reasonably prominent locations on the face of the bill insert: "Ontario's Fair Hydro Plan" and "Bringing electricity bills down". Moreover, the insert must contain the following wording:

> *Ontario's Fair Hydro Plan*
>
> *Electricity bills will be lowered by 25 per cent on average for residential consumers*
>
> *Rate increases will be held to inflation for four years*
>
> *As many as half a million small businesses and farms will also benefit from this reduction*
>
> *Lower-income Ontarians and those living in eligible rural communities will receive even greater reductions, as much as a 40 to 50 per cent cut*
>
> *The benefit will vary for individual consumers depending on electricity usage and service territory. These measures include the eight per cent rebate introduced in January 2017 and build on previous initiatives to deliver broad-based relief on all electricity bills.*
>
> *To find out more, visit ontario.ca/FairHydroPlan.*

Electricity suppliers must include these bill inserts at least once every quarter in the case of specified consumers billed on a monthly basis or twice during the period in the case of consumers billed on a seasonal basis. The Minister can authorize electricity suppliers to use different wording if the supplier cannot incorporate the above-noted language onto its invoices.

In essence, the very claims that are at the subject of the complaints before the ASC have been specifically authorized by the elected representatives of the Province. If electricity suppliers are required by law to make the 25% reduction claim and the affordability claim, then surely the Ministry and other agencies of the Government of Ontario can make the same claims free of scrutiny from the ASC, the Competition Bureau or the courts.

TORONTO CALGARY VANCOUVER MONTRÉAL OTTAWA NEW YORK LONDON RIYADH/AL-KHOBAR* BAHRAIN BEIJING

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On this basis, the Ministry asks that the ASC declare the 25% reduction claim and the affordability claim "non-reviewable" complaints.

Issue 1: The 25% reduction claim is accurate and does not contravene section 1(a) of the Code.

The Board implemented the following measures to reduce invoiced amounts to residential consumers by an average of 25%:

- A portion of the fixed costs of running Ontario's power generation fleet and conservation programs were refinanced over a longer term. This accounted for a 15% reduction to the Electricity line on hydro bills. To achieve the reductions for consumers, the Board lowered the time-of-use prices per kilowatt hour (kWh) effective July 1, 2017.

- The Board shifted the costs associated with social support programs such as the Ontario Electricity Support Program and the Rural or Remote Protection Program from rate payers to the general revenue fund, resulting in a 2% reduction.

- The Government issued an 8% rebate for the provincial portion of the HST.

The Board determined that the rates effective July 1, 2017 under the Program resulted in an average monthly bill of $121, which is 25% lower than the $162 bill the consumer would have received absent the program.[2]

Issue 2: The affordability claim does not contravene section 1(b) of the Code since it is properly qualified and does not omit relevant information about long term costs.

Contrary to the complaint, the representation in issue actually states: "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." The time limitation for the affordability claim is clear: rate increases will be held to inflation for four years.

The Ministry is not under any obligation to include in its advertising what might happen after four years, just like any other advertiser that advertises new, lower prices on a product or service. The Government is free to choose whether to subsidize the lower prices from current or future revenues and is under no obligation to disclose this to the public.

The 30-second radio advertisements directed consumers to the ontario.ca/fairhydroplan website where they could learn more about the Program. The website makes it clear that after four years, prices could increase, although the Government also indicates on the website that it will find opportunities to reduce costs to address affordability issues in the long term.

---

[2] A "proxy" or "average" consumer uses 750 kWh of electricity per month and has a typical time-of-use profile.

In addition to the 25% reduction in the average bill, the Government has also taken steps to reduce electricity bills in the short term and system costs in the long term.

- The Government implemented additional programs to reduce the invoiced amounts for farms and businesses as well as increased support – as much as 30 to 40% – for rural and remote customers. On-reserve First Nations consumers and vulnerable Ontarians are benefiting from even greater reductions.

- The Government amended the Green Energy Investment Agreement, reducing Feed-in Tariff prices, introducing a competitive process for procuring power from large renewable energy projects and deferring the construction of new nuclear units to reduce system costs.

- The Government will release an updated Long-Term Energy Plan (LTEP) this year. The 2017 LTEP will focus on continuing to take additional costs out of the electricity system. For example, the IESO's Market Renewal initiative will result in meeting future system needs at the lowest cost by creating a more efficient marketplace with competitive and transparent mechanisms. This is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term. **[NTD: MOE, can we provide additional detail here?]**

Issue 3: The reliability claim is supported by competent and reliable evidence, and thus does not contravene section 1(e) of the Code.

Since 2003, the Government has invested more than $70 billion in clean generation, conservation and improving Ontario's transmission and distribution grid. Among the measures taken to enhance the reliability of Ontario's power grid include:

- The addition of new natural gas supply to support reliability in Northern and rural communities.

- Programs and incentives to increase the amount of generation in the marketplace from renewable sources, including the contracting of ● MW of new generation as of 2016.

- The introduction of the Feed-in Tariff and MicroFit programs to encourage new and smaller scale generator participation.

- Enhancing competition by allowing new generators to participate, encouraging market pricing and adding electricity as a backstop should power be in short supply.

- The creation of new interconnections with the electricity systems in Manitoba, Michigan, Minnesota, New York and Quebec to backstop tight supply situations for Ontario and surrounding markets.

- Updated codes and standards to increase efficiency in our homes and in business operations, to reduce overall electricity demand.

As noted in the attached documents, Ontario's generation and transmission system is more reliable today.

- Ontario has an additional 8 gigawatts of capacity and produces four terawatt-hours more electricity compared to the same period 10 years ago.

- **[NTD: insert other examples of how the system is more reliable. Are there fewer outages? Are the blackout periods shorter/less frequent? Fewer customer complaints? Ability to restore service faster after major events, such as snowstorms?]**

- **[Support with reference to documents to be enclosed with the submission]**

C. NEXT STEPS

The Ministry thanks the ASC for bringing these concerns to its attention and providing an opportunity for the Ministry to respond. We would appreciate receiving the ASC's feedback as soon as possible in order to come to a satisfactory resolution of this matter. Due to the nature of the ads and the advertiser, we would also appreciate the opportunity to discuss any continuing concerns that the ASC may have in respect of the advertising before any further steps are taken to refer this matter to the Standards Council.

Thank you again for your consideration of our position.

Yours very truly,

Joshua A. Krane

c. Karen Evans, *Ministry of Energy*
Lorie Sloan, *Advertising Review Board*
Alena Thouin, *Legal Services Branch*

ATT00001.pdf

Fwd_ MOE_ASC - Follow-up from our call - Confid....pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY); Evans, Karen (ENERGY); Sloan, Laurie (MGCS)
Subject:	Fwd: MOE/ASC - Follow-up from our call - Confidential
Date:	October 5, 2017 2:56:45 PM

FYI

Joshua A. Krane
Partner
joshua.krane@blakes.com<mailto:joshua.krane@blakes.com>
Dir: 416-863-4187
Cell: 416-471-2068

Begin forwarded message:

From: Rafe Engle <counsel@rsengle.ca<mailto:counsel@rsengle.ca>>
Date: October 5, 2017 at 2:55:24 PM EDT
To: "KRANE, JOSHUA" <JOSHUA.KRANE@blakes.com<mailto:JOSHUA.KRANE@blakes.com>>
Cc: Janet Feasby <janet.feasby@adstandards.ca<mailto:janet.feasby@adstandards.ca>>
Subject: Re: MOE/ASC - Follow-up from our call - Confidential

Thank you Josh and all who were copied on your email (below).

For our part, we will respond as quickly as possible to your follow-up submission after it is received.

Regards,

Rafe Engle

This message may contain confidential and/or privileged information and any rights to privilege have not been waived. If you are not the intended recipient or authorized to receive this for the intended recipient, you must not use, copy, disclose or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply email and delete this message.

Thank you for your co-operation.

On 2017-10-05, at 2:36 PM, "KRANE, JOSHUA" <JOSHUA.KRANE@blakes.com<mailto:JOSHUA.KRANE@blakes.com>> wrote:

Confidential

Rafe,

Thank you for your, Janet and Yamina's time on our conference call this week to clarify the details of the ASC's concerns.

The MOE will provide further information to support the accuracy and truthfulness of the messaging in issue. We will be in a position to provide you with a timing update shortly.

In the interim, this email confirms that the MOE has taken the measures discussed to temporarily withdraw/amend the Ontario Fair Hydro Plan advertising that mentions the 25% bill reduction and/or electricity system reliability and rate affordability.

The actions include:

1) All paid media advertising was completed in mid-August and has not been renewed.

2) Website references within the overview section on Ontario.ca/fairhydroplan<http://Ontario.ca/fairhydroplan><http://Ontario.ca/fairhydroplan> and on energy.gov.on.ca<http://energy.gov.on.ca><http://energy.gov.on.ca>, and the YouTube and Facebook social media posts, have been removed already or will be removed today.

We appreciate the ASC’s patience and understanding to allow the MOE a deadline extension to submit its response. As noted above, we will be in touch shortly to discuss a revised timeline for delivery of those materials to you.

Please do not hesitate to reach out to me should you wish to discuss further.

Regards,

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com<mailto:joshua.krane@blakes.com>
Dir: 416-863-4187
Cell: 416-471-2068

____

<imagef8068c.GIF>

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Tel: 416-863-2400 Fax: 416-863-2653
blakes.com<http://www.blakes.com> | Twitter<http://twitter.com/BlakesLaw/> |
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RE_ ASC response - Privileged and Confidential.pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY)
Cc:	Kacaba, Jennifer (ENERGY)
Subject:	RE: ASC response - Privileged and Confidential
Date:	November 27, 2017 11:36:59 AM
Attachments:	TOR_2528-#23258644-v2-Follow-up_Letter_-_ASC_re_Fair_Hydro_Plan.docx Blackline.pdf

Privileged and Confidential

Hi Alena and Jennifer,

Thanks for sending the draft. A revised submission and blackline are attached for your reference.

In terms of the changes made:

- I added a confirmatory statement at the beginning of the letter about the 25% reduction claim that the ASC had requested on page 3 of its November 13 memo.

- I kept most of the text on the affordability claim but repackaged it into three main arguments:
    - The claim needs to be read in light of the 25% reduction. It is not a blanket claim that electricity bills are more affordable.
    - The ASC's assumption (that the reductions were being achieved through tax increases) is not accurate.
    - It is not certain that invoices will be higher in 2021 due to the efforts being taken to find cost savings in the system.

- On reliability, the ASC's memo was clear that it is looking for evidence of fewer outages/quicker restoration of electricity. The ASC assesses claims based on the general impression from a typical consumer. Ideally, the MOE can provide the ASC with 2 or 3 documents (even if they are from the IESO) that show that Ontarians experience fewer outages on average or have their service restored more quickly today compared to 2005, following the significant investments that have been made.

Please let me know if you would like to schedule a call to discuss.

I would also appreciate your confirmation that I can go back to the ASC to let them know that we are working on a response since it has been two weeks since they sent their memo.

Best regards,

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com
Dir: 416-863-4187
Cell: 416-471-2068

Blakes

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From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Friday, November 24, 2017 6:25 PM
To: KRANE, JOSHUA
Cc: Kacaba, Jennifer (ENERGY)
Subject: FW: ASC response

Hi Josh
Our DM has approved the following supporting responses. These ofcurse will need to be turned into a draft submission.
The timing is relatively tight, not sure if this is something you can prepare by EOD Monday?

Thanks and let us know how we can assist.

Alena Thouin
Deputy Director, Legal Services Branch
Ministries of Energy / Infrastructure / Economic Development & Growth /
Research, Innovation & Science / Accessibility
56 Wellesley St. W. 18th Floor, Toronto, ON M7A 2E7
Tel: 416-325-1834 **Email:** alena.thouin@ontario.ca

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TOR_2528-#23258644-v2-Follow-up_Letter_-_ASC_.pdf

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Joshua A. Krane
Partner
Dir: 416-863-4187
joshua.krane@blakes.com

December ●, 2017

Reference: 14229/1

VIA E-MAIL
CONFIDENTIAL

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

PRIVILEGED AND CONFIDENTIAL – DRAFT

Dear Mr. Engle:

ASC 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:

> 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]

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.

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.

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 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.

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

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

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

electricity system in proportion to the benefit these consumers receive from the system. The MOE has been clear with Ontarians that prices could increase over time.[2]

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 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. Reliability Claim

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:

- 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.

- 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.]**

[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.

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*

Blackline.pdf

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Joshua A. Krane
Partner
Dir: 416-863-4187
joshua.krane@blakes.com

Reference: 14229/1

December ●, 2017

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*

Document comparison by Workshare Compare on Monday, November 27, 2017 10:49:36 AM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23258644/1
Description	TOR_2528-#23258644-v1-Follow-up_Letter_-_ASC_re_Fair_Hydro_Plan
Document 2 ID	PowerDocs://TOR_2528/23258644/2
Description	TOR_2528-#23258644-v2-Follow-up_Letter_-_ASC_re_Fair_Hydro_Plan
Rendering set	standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	59
Deletions	28
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	95

RE_ Advertising Standards Adjudication(1).pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY)
Cc:	Murray, Maud (ENERGY); Evans, Karen (ENERGY); TSENG, ALICE; MALCOLM, FRASER
Subject:	RE: Advertising Standards Adjudication
Date:	September 28, 2017 6:53:55 PM
Attachments:	23219666-v1-ASC - Fair Hydro Plan.PPT

Privileged and Confidential

Alena,

We will reach out to Rafe Engle, the ASC's external counsel, in the morning and report once we have spoken with him.

Attached is a draft briefing deck for your review. Happy to revise or discuss this evening or tomorrow morning.

Best regards,

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com
Dir: 416-863-4187
Cell: 416-471-2068

Blakes

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From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Thursday, September 28, 2017 5:42 PM
To: KRANE, JOSHUA
Cc: Murray, Maud (ENERGY); Evans, Karen (ENERGY); TSENG, ALICE
Subject: FW: Advertising Standards Adjudication

Hi Josh,

Please below instructions from our clients. As such, please go ahead as discussed. We look forward to any updates on your efforts and the deck tomorrow. We also appreciate, as discussed, your efforts to maintain cost effectiveness on this task. Thank you.

Regards,
Alena

Alena Thouin
Deputy Director, Legal Services Branch
Ministries of Energy / Infrastructure / Economic Development & Growth /
Research, Innovation & Science / Accessibility
56 Wellesley St. W. 18th Floor, Toronto, ON M7A 2E7
Tel: 416-325-1834 **Email:** alena.thouin@ontario.ca

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From: Evans, Karen (ENERGY)
Sent: September 28, 2017 5:20 PM
To: Thouin, Alena (ENERGY)
Cc: Murray, Maud (ENERGY)
Subject: RE: Advertising Standards Adjudication

Hi Alena,
Given the fact that we do not have internal expertise regarding this kind of adjudication, please proceed to instruct Blakes to engage with the Ad Standards Council to determine the nature of their concerns and understand timelines and any opportunity to extend them to enable our preparedness.
We also welcome Blakes' sharing its expertise with us on process in these matters.
With thanks,
Karen

Karen Evans
Director, Communications Branch

Ontario Ministry of Energy
4th Floor, Hearst Block, Queen's Park
900 Bay Street, Toronto, ON M7A 2E1
O: 416-327-6541 C:416-705-9637

23219666-v1-ASC - Fair Hydro Plan.pdf

Advertising Standards Canada Review of the Fair Hydro Plan Ad

September 29, 2017

Contents

Blakes

1. ASC Process

- ASC is an industry self-regulatory body
- Mandated to consider consumer complaints regarding ads that contravene the *Canadian Code of Advertising Standards*
- No power to order fines or prohibit ads
- Uses suasion and publicity to compel compliance
  - Publishes case reports, requires corrective notices for retail ads, advises exhibiting media or the Competition Bureau of an advertiser's non-adherence to a decision

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1. ASC Process (cont'd)

- Following receipt of a complaint, ASC staff screen an ad for possible *Code* infractions and asks the advertiser for a written response
- Advertiser may attempt resolution by withdrawing/amending the ad
- If no resolution, deliberation by a Standards Council comprised of ad executives and lawyers
  - Council can ask the advertiser to withdraw or amend the ad
  - Right to appeal a decision within 7 days

Blake, Cassels & Graydon LLP – Privileged and Confidential

1. ASC Process (cont'd)

- 2016 statistics show approx. 60% of ads referred to Council found in breach of the *Code*

COMPLAINTS SUMMARY	2016 COMPLAINTS	ADS/CASES
Received by ASC	1639	1237
Met *Code* acceptance criteria	1108	856
Administratively resolved by staff	178	171
Raised potential *Code* issues & forwarded to Councils	86	51
Upheld by Councils	44	30

Source: http://www.adstandards.com/en/ConsumerComplaints/2016adComplaintsReport.pdf

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2. Timeline of Events to Date

2017

March | April | May | June | July | August | September | October

March 2
Ontario's Fair Hydro Plan Announced

March 13
OFHP advertising campaign launched

April 28
First radio buy for OFHP ads ends

May 4
Letter from ASC regarding complaint re OFHP ad

May 18
Response from MOE to ASC letter

July 5
Second phase of OFHP ad campaign begins

August 6
Second radio buy for OFHP ads ends

August 14
Letter from ASC indicating further complaints re OFHP ads (Aug, 28 deadline)

September 19
Response by MOE to second ASC letter

September 25
Letter from ASC re referral to Council

October 6
Deadline for MOE to provide material to the ASC

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3. Options to Resolve the Matter

- Successfully convince ASC staff not to refer the matter to Council
  - Need to show that the ad has been approved by government
  - May be difficult at this stage – further consultation with ASC required
- Resolve the complaint with ASC
  - Need to assess possible acceptability of amendments
- Convince Council that the ad complies with the *Code*
  - Council considers the ad, complaint letter and the advertiser’s response

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4. Potential Outcomes

- ASC or Council rejects complaint – ads can continue
- MOE agrees with the ASC to amend or withdraw the ads – matter not sent to Council
- Council upholds the complaint – orders the ads withdrawn or amended without delay (could be as quickly as 10 days)
  - Ad will appear in a case report on the ASC’s website
  - ASC may advise exhibiting media or the Bureau if MOE does not comply
  - Requirement to issue corrective notice TBD

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5. Recommended Next Steps

- Blakes to contact Rafe Engle (ASC's outside lawyer and chair of the Council) to discuss status, identify the source of concern and seek a limited extension on timeline to respond
- MOE and Blakes to draft letter elaborating on extensiveness of government approvals for the ad
- MOE and Blakes to revise response explaining why the ads are not false or misleading – due by Oct. 6 (unless extension granted)

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RE_ Advertising Standards Adjudication.pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY)
Cc:	Murray, Maud (ENERGY); Evans, Karen (ENERGY); TSENG, ALICE
Subject:	RE: Advertising Standards Adjudication
Date:	October 1, 2017 7:59:42 PM
Attachments:	23219666-v2-ASC - Fair Hydro Plan.PPT

Hi Alena - please see a revised draft attached.

Happy to find a time tomorrow to walk through the deck and/or discuss any further changes you might like me to make.

Best regards,

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com
Dir: 416-863-4187
Cell: 416-471-2068

-----Original Message-----
From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Sunday, October 01, 2017 6:50 PM
To: KRANE, JOSHUA
Cc: Murray, Maud (ENERGY); Evans, Karen (ENERGY); TSENG, ALICE
Subject: RE: Advertising Standards Adjudication

Hi Joshua
Hope you are well. I have some comments for you.
1. Can we flesh out page 1 and 2 to add more detail and so what types of penalties have been levied in the past? Can you make the process flow more clearly and logically so that a person who never heard of this proceeding can easily understand the flow?
2. Who attends on our behalf ?
3. What happens if advertiser doesn't show up to the council meeting? Can only legal council attend? What are expectations.
4. What becomes public? At which stages?
5. If we stopped the ad and it is no longer on air can that be the solution? At which stage?

We are planning a DM briefing as discussed tomorrow afternoon or next day. Can you kindly turn this around accordingly. I'm available for a call if needed.

Thanks again

Alena

From: KRANE, JOSHUA <JOSHUA.KRANE@blakes.com<mailto:JOSHUA.KRANE@blakes.com>>
Date: Thursday, Sep 28, 2017, 6:13 PM
To: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>
Cc: Murray, Maud (ENERGY) <Maud.Murray3@ontario.ca<mailto:Maud.Murray3@ontario.ca>>, Evans, Karen

(ENERGY) <Karen.Evans@ontario.ca<mailto:Karen.Evans@ontario.ca>>, TSENG, ALICE <ALICE.TSENG@blakes.com<mailto:ALICE.TSENG@blakes.com>>
Subject: Re: Advertising Standards Adjudication

No problem Alena. We should have a draft to you tonight and can finalize it in the morning.

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com<mailto:joshua.krane@blakes.com>
Dir: 416-863-4187
Cell: 416-471-2068

On Sep 28, 2017, at 5:41 PM, Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>> wrote:

Hi Josh,
Please below instructions from our clients. As such, please go ahead as discussed. We look forward to any updates on your efforts and the deck tomorrow. We also appreciate, as discussed, your efforts to maintain cost effectiveness on this task. Thank you.

Regards,
Alena

Alena Thouin
Deputy Director, Legal Services Branch
Ministries of Energy / Infrastructure / Economic Development & Growth / Research, Innovation & Science / Accessibility
56 Wellesley St. W. 18th Floor, Toronto, ON M7A 2E7
Tel: 416-325-1834 Email: alena.thouin@ontario.ca<mailto:alena.thouin@ontario.ca>

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[cid:image53065e.GIF@2db20b77.4aa1f338]

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Unsubscribe<http://www.blakes.com/English/Resources/Bulletins/Pages/unsubscribe.aspx>

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From: Evans, Karen (ENERGY)
Sent: September 28, 2017 5:20 PM
To: Thouin, Alena (ENERGY)
Cc: Murray, Maud (ENERGY)
Subject: RE: Advertising Standards Adjudication

Hi Alena,
Given the fact that we do not have internal expertise regarding this kind of adjudication, please proceed to instruct Blakes to engage with the Ad Standards Council to determine the nature of their concerns and understand timelines and any opportunity to extend them to enable our preparedness.
We also welcome Blakes' sharing its expertise with us on process in these matters.
With thanks,
Karen

Karen Evans
Director, Communications Branch
Ontario Ministry of Energy
4th Floor, Hearst Block, Queen's Park
900 Bay Street, Toronto, ON M7A 2E1
O: 416-327-6541 C:416-705-9637

23219666-v2-ASC - Fair Hydro Plan.pdf

Advertising Standards Canada
Review of the Fair Hydro Plan Ad

October 2, 2017

Contents

1. ASC Process

- ASC is an industry self-regulatory body
  - Government of Ontario is a member
- ASC's mandate is to consider consumer complaints regarding ads that contravene the *Canadian Code of Advertising Standards*
- ASC oversees a complaints procedure designed to encourage advertisers to amend or withdraw non-compliant advertising

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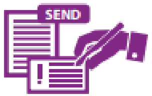
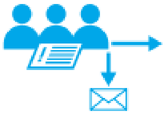
1. ASC Process (cont'd)

1 

ASC reviews each consumer complaint against the Code.

2 

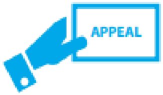
ASC conducts a **preliminary evaluation** of the complaint.

3 

If the complaint raises an issue, the advertiser is requested to provide a **written response**. If a Code issue remains, the complaint is forwarded to the Standards Council for adjudication.

4 

If **Council determines** that the ads contravene the Code, Council asks the advertiser to withdraw or amend the ads.

5 

The **complainant or advertiser can appeal** the decision.

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1. ASC Process (cont'd)

- Standards Councils are comprised of ad executives and lawyers
- Council is chaired by Rafe Engle, ASC's long-time external legal council (central to the process)
- No right to appear before the Council – decision is based on a review of the ad, the complaint(s) and the advertiser's written representations
- Next Council hearing scheduled for October

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1. ASC Process (cont'd)

- ASC has no power to order fines or prohibit ads
- Uses suasion and publicity to compel compliance
  - Publishes case reports, requires corrective notices for retail ads, advises exhibiting media and/or the Competition Bureau of an advertiser's non-adherence to a decision
- By way of recent example, in 2015, ASC worked with complainants concerning advertising denying climate change to prompt a Bureau inquiry

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1. ASC Process (cont'd)

- 2016 statistics show approx. 60% of ads referred to Council found in breach of the *Code*

COMPLAINTS SUMMARY	2016 COMPLAINTS	ADS/CASES
Received by ASC	1639	1237
Met *Code* acceptance criteria	1108	856
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Upheld by Councils	44	30

Source: http://www.adstandards.com/en/ConsumerComplaints/2016adComplaintsReport.pdf

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2. Timeline of Events to Date

2017

March | April | May | June | July | August | September | October

March 2
Ontario's Fair Hydro Plan Announced

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OFHP advertising campaign launched

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September 19
Response by MOE to second ASC letter

September 25
Letter from ASC re referral to Council

October 6
Deadline for MOE to provide material to the ASC

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3. Options to Resolve the Matter

- Successfully convince ASC staff not to refer the matter to Council
  - Need to show that the ad has been approved by government
  - May be difficult at this stage – further consultation with ASC required
- Resolve the complaint with ASC
  - Need to assess possible acceptability of amendments
  - Withdrawal of all advertising possible outcome to be explored
- Convince Council that the ad complies with the *Code*

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4. Potential Outcomes

- ASC or Council rejects complaint – ads can continue
- MOE agrees with the ASC to amend or withdraw the ads – matter not sent to Council
- Council upholds the complaint – orders the ads withdrawn or amended without delay (could be as quickly as 10 days)
  - Ad will appear in a case report on the ASC's website
  - ASC may advise exhibiting media or the Bureau if MOE does not comply

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5. Recommended Next Steps

- Attend call with ASC management to discuss status, identify source of concern and seek limited extension of time to respond
  - ASC likely to extend timelines if MOE willing to temporarily withdraw ads, including the webpage, until the matter is resolved
- MOE and Blakes to draft letter elaborating on extensiveness of government approvals for the ads
- MOE and Blakes to revise response explaining why the ads are not false or misleading – due by Oct. 6 (unless extension granted)

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RE_ Draft e-mail to ASC for Review(1).pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY)
Subject:	RE: Draft e-mail to ASC for Review
Date:	October 10, 2017 2:10:49 PM
Attachments:	23223169-v1-Letter - ASC re Ontario Fair Hydro Plan.docx

Hi Alena – hope you had an enjoyable long weekend.

Would you like to discuss how we can action the draft? Were you able to get a sense of timing from Karen/the DM or any feedback on the work plan?

Thanks very much.

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com
Dir: 416-863-4187
Cell: 416-471-2068

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From: KRANE, JOSHUA
Sent: Thursday, October 05, 2017 10:59 AM
To: 'Thouin, Alena (ENERGY)'
Subject: RE: Draft e-mail to ASC for Review

Joshua A. Krane
Partner
joshua.krane@blakes.com
Dir: 416-863-4187
Cell: 416-471-2068

From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Thursday, October 05, 2017 10:55 AM

To: KRANE, JOSHUA
Subject: FW: Draft e-mail to ASC for Review

Happy to chat when you have time

From: Evans, Karen (ENERGY)
Sent: October 5, 2017 10:09 AM
To: Thouin, Alena (ENERGY)
Cc: Cusimano, Jo-Anne (ENERGY); Barbaro, Rachel (ENERGY)
Subject: RE: Draft e-mail to ASC for Review

Hi Alena, can you please give this a read and make sure it meets our needs with the first action on the ASC. Thx, Karen
I was asked by MO to hold on taking everything down until today. So we will make these changes today.
Thx,
Karen

Ms Feasby,
Thank you for your time on our conference call to clarify the details of the Advertising Standards Council's concerns. To follow up on our commitments, we will endeavour to provide further information to support the accuracy and truthfulness of the messaging within the advertising at an agreed upon timeframe.

In the interim, this will confirm that Ontario Fair Hydro Plan advertising that mentions the 25% bill reduction and/or electricity system reliability and rate affordability has been removed from public display.

Advertising adjustments and actions include:

1) All paid media advertising was completed in mid-August. This confirms the advertising will not be used again.
2) All owned media channels – specifically website references within the overview section on Ontario.ca/fairhydroplan and edits to energy.gov.on.ca websites. Social Media posts: YouTube, Facebook, Twitter have also been removed.

We appreciate your patience and understanding to allow us a deadline extension to share further information. We'll be in touch shortly to discuss a revised timeline for our written response.

Karen Evans

CC: Rafe Engle, Yamina Bennacer, Laurie Sloan, Joshua Krane, Alena Thouin

23223169-v1-Letter - ASC re Ontario Fair Hydr.pdf

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Joshua A. Krane
Partner
Dir: 416-863-4187
joshua.krane@blakes.com

October ●, 2017

Reference: 14229/1

VIA E-MAIL
CONFIDENTIAL

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

PRIVILEGED AND CONFIDENTIAL – DRAFT

Dear Mr. Engle:

ASC Ref. # 142792, 142861 and 142892 – Fair Hydro Plan

We are writing in response to Janet Feasby's letter of September 25, 2017 and our call with you and Ms. Feasby of October 3, 2017. The Ministry of Energy would like to assure the ASC that its advertising is intended to inform Ontarians about the substantial benefits of new legislation designed to reduce hydro bills for residential consumers and is in no way intended to mislead consumers about the Fair Hydro Plan. To ensure that the Ministry addresses the ASC's concerns in a satisfactory manner, the Ministry has temporarily withdrawn the claims in issue as per our email exchange of October **[5]**, 2017. Despite these temporary measures, the Ministry stands behind the truthfulness of the messaging and intends to continue communicating with Ontarians about the benefits of the Fair Hydro Plan once this matter is resolved.

A. SUMMARY OF THE ISSUES

As a preliminary matter, the Ministry's position is that, with the exception of the complaint related to the improved reliability of Ontario's electricity system, the two other complaints – i.e., pertaining to the 25% reduction of household electricity bills and bill affordability – are "non-reviewable" in accordance with the ASC's *Consumer Complaints Procedure* ("**Procedure**"). As explained in more detail below, these claims have been specifically authorized by Ontario's elected representatives in regulations promulgated under the *Ontario Fair Hydro Act, 2017* (the "**Act**").[1] Not only have the claims in issue been authorized by law, but electricity suppliers are required under the regulations to make such claims on their invoices and on bill inserts to consumers. Accordingly, it would be inconsistent with the Act and the accompanying regulations for the ASC to declare that the Ministry amend or withdraw advertising containing the very claims that the Ontario Legislature and Cabinet have required electricity suppliers to make.

[1] *Ontario Fair Hydro Plan Act, 2017*, S.O. 2017, c. 16, Sched. 1, online: https://www.ontario.ca/laws/statute/17o16.

On our October 3, 2017 call, you indicated that the ASC received complaints in respect of three specific claims in the advertising:

1) "Household electricity bills will be an average of 25% less" ("**25% reduction claim**");

2) "Upgrades to our [Ontario's] electricity system have made it more reliable for Ontarians" ("**reliability claim**"); and

3) "Recent changes have made bills more affordable" ("**affordability claim**")

None of these claims contravenes the *Canadian Code of Advertising Standards*. In brief:

1) **The 25% reduction claim is accurate and does not contravene section 1(a) of the Code**. The Act and accompanying regulations task the Ontario Energy Board ("**Board**") to take measures to ensure that the rates for a hypothetical average regulated rate consumer who meets the prescribed criteria receives an invoice that is 25% less than the consumer would have received in the absence of the adjustment. The focus is on the invoiced amount, not the amount paid for electricity, which represents only one component of a customer's hydro bill.

   The main source of the reduction stems from lower time-of-use ("**TOU**") electricity rates that would otherwise have been paid by consumers. Those lower rates became effective on July 1, 2017 and were approximately 29% lower than the rates that would otherwise have been in effect had the Fair Hydro Plan not been implemented.

   In addition, the Board must hold any rate increases to the rate of inflation for the next four years. The 8% rebate for the Ontario portion of the HST forms part of the calculation of the 25% bill reduction. The Government of Ontario has implemented additional programs to reduce the invoiced amounts for consumers, including consumers in rural areas and on First Nations reserves.

2) **The reliability claim is supported by competent and reliable evidence, which the Ministry encloses with this submission, and thus does not contravene section 1(e) of the Code**.[2] The data enclosed with this submission clearly show that Ontario's electricity system is more reliable today as a result of investments made by the Government of Ontario. **[NTD: summarize reliability measures from the data]**

3) **The affordability claim does not contravene section 1(b) of the Code since it is properly qualified and does not omit relevant information about long term costs.** The

[2] The Ministry asks that the ASC treat this information as confidential and not disclose this information to any third-parties without the Ministry's consent. The Ministry consistently treats this information as confidential and proprietary.

representation in issue actually states: “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.” The time limitation for the affordability claim is clear: rate increases will be held to inflation for four years. The Ministry is not under any obligation to include in its advertising what might happen after four years, just like any other advertiser that advertises new, lower prices on a product or service. The advertiser is free to choose whether to subsidize the lower prices from current or future revenues and is under no obligation to disclose this to the public.

The 30-second radio advertisements directed consumers to the ontario.ca/fairhydroplan website where they could learn more about the program. The website makes it clear that after four years, prices will increase, although the Government also indicates on the website that it will find opportunities to reduce costs to address affordability issues in the long term.[3]

We elaborate on these submissions below.

B. DISCUSSION

The 25% reduction claim and the affordability claim are non-reviewable complaints under the Procedure.

Under the Procedure, the Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that: the advertising, or such part of the advertising to which the complaint refers … has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government. Although the Procedure does not define the term “Canadian Government”, we understand that the ASC’s position is that the provision is intended to apply to situations where the advertisement has been authorized by a government entity and thus could not, under law, be found to be false or materially misleading.

The Ministry’s view is that the ASC should declare that the complaint is non-reviewable since the claims in issue have been specifically authorized by regulations promulgated by the Province’s elected representatives.

---

[3] “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.

The government will focus on taking additional costs out of the system, and address affordability over the long term. For example, the Independent Electricity System Operator’s 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 over a 10-year period, and forms a key component of Ontario’s plan to ensure electricity bills stay low.”

By way of background, on June 1, 2017, Bill 132 (the Act) received Royal Assent and entered into force. Section 7 of the Act requires that the Board take measures to ensure that the rates for a hypothetical average regulated rate consumer who meets the prescribed criteria receives an invoice that is 25% less than the consumer would have received in the absence of the adjustment. Section 11 of the Act authorizes the provincial Cabinet to make regulations that set out the applicable methodologies for reducing a consumer's bill.

Ontario Regulation 195/17: *Fair Adjustment under Part II of the Act* ("**Fair Adjustment Regulation**") explains how the reduction in the invoiced amount is achieved. Section 3 of the Fair Adjustment Regulation requires that the total invoice paid by the hypothetical average consumer must be 25% lower than the invoice would have been absent the adjustment by the Board.

> **Regulated rate consumers, first fair adjustment under s. 7 of the Act**
>
> 3. For the purposes of section 7 of the Act, the Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the electricity included in Total Invoice Amount B, result in Total Invoice Amount B being 25 per cent less than Total Invoice Amount A.

In a separate regulation, Ontario Regulation 196/17: *Invoicing Requirements* ("**Invoicing Requirements Regulation**"), Cabinet specifically mandated the use of certain statements on electricity bills. Section 1 of the Invoicing Regulation states that invoices <u>must</u> include the following statement:

> *"Ontario's Fair Hydro Plan substantially lowers electricity bills for typical residential consumers. <u>This includes the eight per cent rebate introduced in January 2017, and builds on previous initiatives to deliver broad-based relief on all electricity bills</u>."*

Section 2 requires that paper invoices <u>must</u> include bill inserts that feature the following statements in reasonably prominent locations on the face of the bill insert: "Ontario's Fair Hydro Plan" and "Bringing electricity bills down". Moreover, the insert must contain the following wording:

> *Ontario's Fair Hydro Plan*
>
> *<u>Electricity bills will be lowered by 25 per cent on average for residential consumers</u>*
>
> *<u>Rate increases will be held to inflation for four years</u>*
>
> *As many as half a million small businesses and farms will also benefit from this reduction*
>
> *Lower-income Ontarians and those living in eligible rural communities will receive even greater reductions, as much as a 40 to 50 per cent cut*

TORONTO CALGARY VANCOUVER MONTRÉAL OTTAWA NEW YORK LONDON RIYADH/AL-KHOBAR* BAHRAIN BEIJING
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The benefit will vary for individual consumers depending on electricity usage and service territory. These measures include the eight per cent rebate introduced in January 2017 and build on previous initiatives to deliver broad-based relief on all electricity bills.

To find out more, visit ontario.ca/FairHydroPlan.

Electricity suppliers must include these bill inserts at least once every quarter in the case of specified consumers billed on a monthly basis or twice during the period in the case of consumers billed on a seasonal basis. The Minister can authorize electricity suppliers to use different wording if the supplier cannot incorporate the above-noted language onto its invoices.

In essence, the very claims that are at the subject of the complaints before the ASC have been specifically authorized by the elected representatives of the Province. Surely if electricity suppliers are required by law to make the 25% reduction claim and the affordability claim, then surely the Ministry of Energy and other agencies of the Government of Ontario can make the same claims free of scrutiny from the ASC or otherwise.

On this basis, the Ministry asks that the ASC conclude that the 25% reduction claim and the affordability claim non-reviewable.

Issue 1: The 25% reduction claim is accurate and does not contravene section 1(a) of the Code.

Issue 2: The reliability claim is supported by competent and reliable evidence, and thus does not contravene section 1(e) of the Code.

Issue 3: The affordability claim does not contravene section 1(b) of the Code since it is properly qualified and does not omit relevant information about long term costs.

C. NEXT STEPS

The Ministry thanks the ASC for bringing these concerns to its attention and providing an opportunity for the Ministry to respond. We would appreciate receiving the ASC's feedback as soon as possible in order to come to a satisfactory resolution of this matter. Due to the nature of the ads and the advertiser, we would also appreciate the opportunity to discuss any continuing concerns that the ASC may have in respect of the advertising before any further steps are taken to refer this matter to the Standards Council.

Thank you again for your consideration of our position.

Yours very truly,

Joshua A. Krane

c. Lorie Sloan, *Advertising Review Board*
Alena Thouin, *Legal Services Branch*

23223169.1

RE_ Draft e-mail to ASC for Review(2).pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY)
Subject:	RE: Draft e-mail to ASC for Review
Date:	October 5, 2017 10:59:01 AM
Attachments:	23223169-v1-Letter - ASC re Ontario Fair Hydro Plan.DOCX

Joshua A. Krane
Partner
joshua.krane@blakes.com
Dir: 416-863-4187
Cell: 416-471-2068

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From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Thursday, October 05, 2017 10:55 AM
To: KRANE, JOSHUA
Subject: FW: Draft e-mail to ASC for Review

Happy to chat when you have time

From: Evans, Karen (ENERGY)
Sent: October 5, 2017 10:09 AM
To: Thouin, Alena (ENERGY)
Cc: Cusimano, Jo-Anne (ENERGY); Barbaro, Rachel (ENERGY)
Subject: RE: Draft e-mail to ASC for Review

Hi Alena, can you please give this a read and make sure it meets our needs with the first action on the ASC. Thx, Karen
I was asked by MO to hold on taking everything down until today. So we will make these changes today.
Thx,
Karen

Ms Feasby,
Thank you for your time on our conference call to clarify the details of the Advertising Standards Council's concerns. To follow up on our commitments, we will endeavour to provide further information to support the accuracy and truthfulness of the messaging within the advertising at an agreed upon timeframe.

In the interim, this will confirm that Ontario Fair Hydro Plan advertising that mentions the 25% bill reduction and/or electricity system reliability and rate affordability has been removed from public display.

Advertising adjustments and actions include:

1) All paid media advertising was completed in mid-August. This confirms the advertising will not be used again.
2) All owned media channels – specifically website references within the overview section on Ontario.ca/fairhydroplan and edits to energy.gov.on.ca websites. Social Media posts: YouTube, Facebook, Twitter have also been removed.

We appreciate your patience and understanding to allow us a deadline extension to share further information. We'll be in touch shortly to discuss a revised timeline for our written response.

Karen Evans

CC: Rafe Engle, Yamina Bennacer, Laurie Sloan, Joshua Krane, Alena Thouin

23223169-v1-Letter - ASC re Ontario Fair Hydr_1.pdf

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Joshua A. Krane
Partner
Dir: 416-863-4187
joshua.krane@blakes.com

October ●, 2017

Reference: 14229/1

VIA E-MAIL
CONFIDENTIAL

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

PRIVILEGED AND CONFIDENTIAL – DRAFT

Dear Mr. Engle:

ASC Ref. # 142792, 142861 and 142892 – Fair Hydro Plan

We are writing in response to Janet Feasby's letter of September 25, 2017 and our call with you and Ms. Feasby of October 3, 2017. The Ministry of Energy would like to assure the ASC that its advertising is intended to inform Ontarians about the substantial benefits of new legislation designed to reduce hydro bills for residential consumers and is in no way intended to mislead consumers about the Fair Hydro Plan. To ensure that the Ministry addresses the ASC's concerns in a satisfactory manner, the Ministry has temporarily withdrawn the claims in issue as per our email exchange of October **[5]**, 2017. Despite these temporary measures, the Ministry stands behind the truthfulness of the messaging and intends to continue communicating with Ontarians about the benefits of the Fair Hydro Plan once this matter is resolved.

A. SUMMARY OF THE ISSUES

As a preliminary matter, the Ministry's position is that, with the exception of the complaint related to the improved reliability of Ontario's electricity system, the two other complaints – i.e., pertaining to the 25% reduction of household electricity bills and bill affordability – are "non-reviewable" in accordance with the ASC's *Consumer Complaints Procedure* ("**Procedure**"). As explained in more detail below, these claims have been specifically authorized by Ontario's elected representatives in regulations promulgated under the *Ontario Fair Hydro Act, 2017* (the "**Act**").[1] Not only have the claims in issue been authorized by law, but electricity suppliers are required under the regulations to make such claims on their invoices and on bill inserts to consumers. Accordingly, it would be inconsistent with the Act and the accompanying regulations for the ASC to declare that the Ministry amend or withdraw advertising containing the very claims that the Ontario Legislature and Cabinet have required electricity suppliers to make.

---

[1] *Ontario Fair Hydro Plan Act, 2017*, S.O. 2017, c. 16, Sched. 1, online: https://www.ontario.ca/laws/statute/17o16.

23223169.1

On our October 3, 2017 call, you indicated that the ASC received complaints in respect of three specific claims in the advertising:

1) “Household electricity bills will be an average of 25% less” (“**25% reduction claim**”);

2) “Upgrades to our [Ontario’s] electricity system have made it more reliable for Ontarians” (“**reliability claim**”); and

3) “Recent changes have made bills more affordable” (“**affordability claim**”)

None of these claims contravenes the *Canadian Code of Advertising Standards*. In brief:

1) **The 25% reduction claim is accurate and does not contravene section 1(a) of the Code**. The Act and accompanying regulations task the Ontario Energy Board (“**Board**”) to take measures to ensure that the rates for a hypothetical average regulated rate consumer who meets the prescribed criteria receives an invoice that is 25% less than the consumer would have received in the absence of the adjustment. The focus is on the invoiced amount, not the amount paid for electricity, which represents only one component of a customer’s hydro bill.

   The main source of the reduction stems from lower time-of-use (“**TOU**”) electricity rates that would otherwise have been paid by consumers. Those lower rates became effective on July 1, 2017 and were approximately 29% lower than the rates that would otherwise have been in effect had the Fair Hydro Plan not been implemented.

   In addition, the Board must hold any rate increases to the rate of inflation for the next four years. The 8% rebate for the Ontario portion of the HST forms part of the calculation of the 25% bill reduction. The Government of Ontario has implemented additional programs to reduce the invoiced amounts for consumers, including consumers in rural areas and on First Nations reserves.

2) **The reliability claim is supported by competent and reliable evidence, which the Ministry encloses with this submission, and thus does not contravene section 1(e) of the Code**.[2] The data enclosed with this submission clearly show that Ontario’s electricity system is more reliable today as a result of investments made by the Government of Ontario. **[NTD: summarize reliability measures from the data]**

3) **The affordability claim does not contravene section 1(b) of the Code since it is properly qualified and does not omit relevant information about long term costs.** The

[2] The Ministry asks that the ASC treat this information as confidential and not disclose this information to any third-parties without the Ministry’s consent. The Ministry consistently treats this information as confidential and proprietary.

representation in issue actually states: "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." The time limitation for the affordability claim is clear: rate increases will be held to inflation for four years. The Ministry is not under any obligation to include in its advertising what might happen after four years, just like any other advertiser that advertises new, lower prices on a product or service. The advertiser is free to choose whether to subsidize the lower prices from current or future revenues and is under no obligation to disclose this to the public.

The 30-second radio advertisements directed consumers to the ontario.ca/fairhydroplan website where they could learn more about the program. The website makes it clear that after four years, prices will increase, although the Government also indicates on the website that it will find opportunities to reduce costs to address affordability issues in the long term.[3]

We elaborate on these submissions below.

B. DISCUSSION

The 25% reduction claim and the affordability claim are non-reviewable complaints under the Procedure.

Under the Procedure, the Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that: the advertising, or such part of the advertising to which the complaint refers … has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government. Although the Procedure does not define the term "Canadian Government", we understand that the ASC's position is that the provision is intended to apply to situations where the advertisement has been authorized by a government entity and thus could not, under law, be found to be false or materially misleading.

The Ministry's view is that the ASC should declare that the complaint is non-reviewable since the claims in issue have been specifically authorized by regulations promulgated by the Province's elected representatives.

[3] "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.

The government will focus on taking additional costs out of the system, and address affordability over the long term. For example, the Independent Electricity System Operator's 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 over a 10-year period, and forms a key component of Ontario's plan to ensure electricity bills stay low."

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By way of background, on June 1, 2017, Bill 132 (the Act) received Royal Assent and entered into force. Section 7 of the Act requires that the Board take measures to ensure that the rates for a hypothetical average regulated rate consumer who meets the prescribed criteria receives an invoice that is 25% less than the consumer would have received in the absence of the adjustment. Section 11 of the Act authorizes the provincial Cabinet to make regulations that set out the applicable methodologies for reducing a consumer's bill.

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> **Regulated rate consumers, first fair adjustment under s. 7 of the Act**
>
> 3. For the purposes of section 7 of the Act, the Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the electricity included in Total Invoice Amount B, result in Total Invoice Amount B being 25 per cent less than Total Invoice Amount A.

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> *"Ontario's Fair Hydro Plan substantially lowers electricity bills for typical residential consumers. <u>This includes the eight per cent rebate introduced in January 2017, and builds on previous initiatives to deliver broad-based relief on all electricity bills</u>."*

Section 2 requires that paper invoices <u>must</u> include bill inserts that feature the following statements in reasonably prominent locations on the face of the bill insert: "Ontario's Fair Hydro Plan" and "Bringing electricity bills down". Moreover, the insert must contain the following wording:

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>
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>
> *<u>Rate increases will be held to inflation for four years</u>*
>
> *As many as half a million small businesses and farms will also benefit from this reduction*
>
> *Lower-income Ontarians and those living in eligible rural communities will receive even greater reductions, as much as a 40 to 50 per cent cut*

> *The benefit will vary for individual consumers depending on electricity usage and service territory. These measures include the eight per cent rebate introduced in January 2017 and build on previous initiatives to deliver broad-based relief on all electricity bills.*
>
> *To find out more, visit ontario.ca/FairHydroPlan.*

Electricity suppliers must include these bill inserts at least once every quarter in the case of specified consumers billed on a monthly basis or twice during the period in the case of consumers billed on a seasonal basis. The Minister can authorize electricity suppliers to use different wording if the supplier cannot incorporate the above-noted language onto its invoices.

In essence, the very claims that are at the subject of the complaints before the ASC have been specifically authorized by the elected representatives of the Province. Surely if electricity suppliers are required by law to make the 25% reduction claim and the affordability claim, then surely the Ministry of Energy and other agencies of the Government of Ontario can make the same claims free of scrutiny from the ASC or otherwise.

On this basis, the Ministry asks that the ASC conclude that the 25% reduction claim and the affordability claim non-reviewable.

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Issue 2: The reliability claim is supported by competent and reliable evidence, and thus does not contravene section 1(e) of the Code.

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C. NEXT STEPS

The Ministry thanks the ASC for bringing these concerns to its attention and providing an opportunity for the Ministry to respond. We would appreciate receiving the ASC's feedback as soon as possible in order to come to a satisfactory resolution of this matter. Due to the nature of the ads and the advertiser, we would also appreciate the opportunity to discuss any continuing concerns that the ASC may have in respect of the advertising before any further steps are taken to refer this matter to the Standards Council.

Thank you again for your consideration of our position.

Yours very truly,

Joshua A. Krane

c. Lorie Sloan, *Advertising Review Board*
Alena Thouin, *Legal Services Branch*

RE_ Draft e-mail to ASC for Review.pdf

From: KRANE, JOSHUA
To: Thouin, Alena (ENERGY)
Subject: RE: Draft e-mail to ASC for Review
Date: October 12, 2017 8:16:22 PM

Hi Alena -no problem. Hope the surgery went well. I'm available tomorrow other than between 1230-130.

Speak soon.

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com
Dir: 416-863-4187
Cell: 416-471-2068

-----Original Message-----
From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Thursday, October 12, 2017 8:05 PM
To: KRANE, JOSHUA
Subject: RE: Draft e-mail to ASC for Review

Hi Josh
Sorry for the silence.
I have been off for a surgery on Tuesday.
Can we possibly touch base tomorrow?

From: KRANE, JOSHUA <JOSHUA.KRANE@blakes.com<mailto:JOSHUA.KRANE@blakes.com>>
Date: Tuesday, Oct 10, 2017, 2:10 PM
To: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>
Subject: RE: Draft e-mail to ASC for Review

Hi Alena - hope you had an enjoyable long weekend.

Would you like to discuss how we can action the draft? Were you able to get a sense of timing from Karen/the DM or any feedback on the work plan?

Thanks very much.

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com<mailto:joshua.krane@blakes.com>
Dir: 416-863-4187
Cell: 416-471-2068

[cid:image0a409b.GIF@4f3f21e4.49bea70e]

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From: KRANE, JOSHUA
Sent: Thursday, October 05, 2017 10:59 AM
To: 'Thouin, Alena (ENERGY)'
Subject: RE: Draft e-mail to ASC for Review

Joshua A. Krane
Partner
joshua.krane@blakes.com<mailto:joshua.krane@blakes.com>
Dir: 416-863-4187
Cell: 416-471-2068

From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Thursday, October 05, 2017 10:55 AM
To: KRANE, JOSHUA
Subject: FW: Draft e-mail to ASC for Review

Happy to chat when you have time

From: Evans, Karen (ENERGY)
Sent: October 5, 2017 10:09 AM
To: Thouin, Alena (ENERGY)
Cc: Cusimano, Jo-Anne (ENERGY); Barbaro, Rachel (ENERGY)
Subject: RE: Draft e-mail to ASC for Review

Hi Alena, can you please give this a read and make sure it meets our needs with the first action on the ASC. Thx, Karen I was asked by MO to hold on taking everything down until today. So we will make these changes today.
Thx,
Karen

Ms Feasby,
Thank you for your time on our conference call to clarify the details of the Advertising Standards Council's

concerns. To follow up on our commitments, we will endeavour to provide further information to support the accuracy and truthfulness of the messaging within the advertising at an agreed upon timeframe.

In the interim, this will confirm that Ontario Fair Hydro Plan advertising that mentions the 25% bill reduction and/or electricity system reliability and rate affordability has been removed from public display.

Advertising adjustments and actions include:

1) All paid media advertising was completed in mid-August. This confirms the advertising will not be used again.

2) All owned media channels - specifically website references within the overview section on Ontario.ca/fairhydroplan and edits to energy.gov.on.ca websites. Social Media posts: YouTube, Facebook, Twitter have also been removed.

We appreciate your patience and understanding to allow us a deadline extension to share further information. We'll be in touch shortly to discuss a revised timeline for our written response.

Karen Evans

CC: Rafe Engle, Yamina Bennacer, Laurie Sloan, Joshua Krane, Alena Thouin

RE_ For Approval - Initial Email to Ad Standards.pdf

From: Evans, Karen (ENERGY)
To: KRANE, JOSHUA; Thouin, Alena (ENERGY)
Subject: RE: For Approval - Initial Email to Ad Standards
Date: October 5, 2017 2:27:36 PM

Just called you. But it went to vmail. Should I call your cell?

-----Original Message-----
From: KRANE, JOSHUA [mailto:JOSHUA.KRANE@blakes.com]
Sent: October-05-17 2:27 PM
To: Thouin, Alena (ENERGY)
Cc: Evans, Karen (ENERGY)
Subject: Re: For Approval - Initial Email to Ad Standards

Alena and Karen

The overview section on the FHP page is still active. What is the timing on the removal?

Regards,

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com<mailto:joshua.krane@blakes.com>
Dir: 416-863-4187
Cell: 416-471-2068

On Oct 5, 2017, at 2:20 PM, Thouin, Alena (ENERGY)
<Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>> wrote:

[cid:image5b0fc3.GIF@3b95c842.4791eb19]

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199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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Unsubscribe<http://www.blakes.com/English/Resources/Bulletins/Pages/unsubscribe.aspx>

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From: Evans, Karen (ENERGY)
Sent: October 5, 2017 2:18 PM
To: Thouin, Alena (ENERGY)
Cc: Lyon, Sam (ENERGY); Barbaro, Rachel (ENERGY); Cusimano, Jo-Anne (ENERGY)
Subject: FW: For Approval - Initial Email to Ad Standards

Hi Alena
Below email is approved and can go to ASC through Blakes.
Tx
Karen

From: Berg, Denna (ENERGY)
Sent: October-05-17 1:42 PM
To: Evans, Karen (ENERGY)
Cc: Schlaepfer, Martin (ENERGY); Cusimano, Jo-Anne (ENERGY); Barbaro, Rachel (ENERGY)
Subject: Re: For Approval - Initial Email to Ad Standards

DM approved. Thanks for sharing, Karen!

Sent from my iPad

On Oct 5, 2017, at 12:46 PM, Evans, Karen (ENERGY)
<Karen.Evans@ontario.ca<mailto:Karen.Evans@ontario.ca>> wrote:
Hi Denna,
As a first step in our proceedings with the Advertising Standards Council, we are to send an email indicating that we have removed all references to the advertising.
I submit the draft email below, which will be sent to ASC through our counsel at Blakes for approval.
Alena Thouin has reviewed it.
If possible, we would like to send this to ASC today.

Tx
Karen

Ms Feasby,
Thank you for your time on our conference call this week to clarify the details of the Advertising Standards Council’s concerns. To follow up on our commitments, we will endeavour to provide further information to support the accuracy and truthfulness of the messaging within the advertising within an agreed upon timeframe.

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3) All owned media channels – specifically website references within the overview section on Ontario.ca/fairhydroplan<http://Ontario.ca/fairhydroplan> and edits to energy.gov.on.ca<http://energy.gov.on.ca> websites. Social Media posts: YouTube, Facebook, Twitter have also been removed.

We appreciate your patience and understanding to allow us a deadline extension to share further information. We’ll be in touch shortly to discuss a revised timeline for our written response.

Thank you,
J. Krane

CC: Rafe Engle, Yamina Bennacer, Laurie Sloan, Alena Thouin, Karen Evans

Karen Evans
Director, Communications Branch
Ontario Ministry of Energy
4th Floor, Hearst Block, Queen's Park
900 Bay Street, Toronto, ON M7A 2E1
O: 416-327-6541 C:416-705-9637

RE_ MOE - ASC Matter - Privileged and Confidential.pdf

From: Thouin, Alena (ENERGY)
To: KRANE, JOSHUA
Subject: RE: MOE - ASC Matter - Privileged and Confidential
Date: September 29, 2017 3:29:00 PM

Hi Joshua
I ran out of time for today to respond, but some updates

1. Yes we will join Lorie, will send invite, we can chat Monday
2. Will send revised deck on Sunday
3. DM briefing on Monday afternoon, I will send you invite, please attend by phone (just yourself please, unless someone is necessary)

Thank you!

From: KRANE, JOSHUA [mailto:JOSHUA.KRANE@blakes.com]
Sent: September 29, 2017 11:22 AM
To: Thouin, Alena (ENERGY)
Subject: Re: MOE - ASC Matter - Privileged and Confidential

Privileged and Confidential

Alena,

I spoke with Rafe Engle this morning.

Here is where we stand:

1. Rafe seems to think there is a call scheduled with Lorie Sloan next Tuesday. We might want to confirm with Lorie this call is taking place. If so, you and I should probably attend – and it should proceed on a *without prejudice* basis.

2. I asked Rafe to go back to the ASC and identify the specific concerns it has with the ads. I expect we will hear these concerns on Tuesday if the call proceeds. Rafe confirmed that the ASC is not treating this matter as “retail advertising” meaning the ASC will not require the publication of corrective notices if it determines the representations contravened the *Code*.

3. We should inquire internally about the procedure under which the ad was authorized at the MOE. Did the Auditor General’s office review and approve the ad? If so, did it consider the truthfulness of the claim as part of its authorization? Is there an internal memo supporting this?

4. Rafe understands the timing constraints. The ASC will typically extend a timeline if an advertiser agrees to withdraw the advertising temporarily. To the extent that the Fair Hydro Plan website is the only in-market ad, the MOE should consider taking down the page temporarily until we can work to resolve the ASC’s concerns. Is this going to be an issue?

Happy to discuss today.

I am offline as of 4:00 pm for the Yom Kippur holiday, but available on Sunday or early next week to discuss.

Josh

Joshua A. Krane
Partner

joshua.krane@blakes.com
Dir: 416-863-4187
Cell: 416-471-2068

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RE_ Our Ref #142792, 142861 & 142892   Governme....pdf

From:	TSENG, ALICE
To:	Thouin, Alena (ENERGY)
Cc:	KRANE, JOSHUA
Subject:	RE: Our Ref #142792, 142861 & 142892 – Government of ON – Fait Hydro Plan – Radio Advertisement
Date:	September 27, 2017 1:56:46 PM
Attachments:	23134970-v2-BCG Comments - Response to Advertising Standards Canada re O....docx

Thanks Alena. I had sent this draft response to Carolyn Calwell in May. I don't have any correspondence after that. Can you send. Thanks.

Alice Tseng
Partner
alice.tseng@blakes.com
Dir: 416-863-3067

Blakes

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From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Wednesday, September 27, 2017 1:34 PM
To: TSENG, ALICE
Subject: FW: Our Ref #142792, 142861 & 142892 – Government of ON – Fait Hydro Plan – Radio Advertisement

---

From: Cusimano, Jo-Anne (ENERGY)
Sent: September 26, 2017 4:21 PM
To: Thouin, Alena (ENERGY)
Cc: Evans, Karen (ENERGY); Barbaro, Rachel (ENERGY)
Subject: FW: Our Ref #142792, 142861 & 142892 – Government of ON – Fait Hydro Plan – Radio Advertisement

Hi Alena,
Please see attached response from the Advertising Standards Canada. It may be helpful to consult with Blakes who drafted the earlier response due to their experience with ASC.

Please let me know your comments asap.
Thanks,
Jo-Anne

From: Barbaro, Rachel (ENERGY)
Sent: September-26-17 3:39 PM
To: Berg, Denna (ENERGY)
Cc: Evans, Karen (ENERGY); Lyon, Sam (ENERGY); Cusimano, Jo-Anne (ENERGY)
Subject: FW: Our Ref #142792, 142861 & 142892 – Government of ON – Fait Hydro Plan – Radio Advertisement

Denna – may Karen and I flag this for MO and CO? Is DM aware?

Rachel

From: Bennacer, Yamina [mailto:yamina.bennacer@adstandards.ca]
Sent: September-25-17 4:18 PM
To: Evans, Karen (ENERGY)
Cc: Cusimano, Jo-Anne (ENERGY); Sloan, Laurie (MGCS)
Subject: RE: Our Ref #142792, 142861 & 142892 – Government of ON – Fait Hydro Plan – Radio Advertisement

Dear Karen,

Please find, attached, important correspondence from ASC regarding the above mentioned complaint.
If you have any questions, please feel free to contact me.

Regards,

Yamina Bennacer
Manager, Standards
Tel: 416 961-6311 x 249
yamina.bennacer@adstandards.ca

Ad Standards™

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Ad Standards | 175 Bloor St E, South Tower, Suite 1801 | Toronto, ON M4W 3R8

From: Evans, Karen (ENERGY) [mailto:Karen.Evans@ontario.ca]
Sent: September-19-17 5:10 PM
To: Bennacer, Yamina <yamina.bennacer@adstandards.ca>
Cc: Cusimano, Jo-Anne (ENERGY) <Jo-Anne.Cusimano@ontario.ca>; Sloan, Laurie (MGCS) <Laurie.Sloan@ontario.ca>

Subject: RE: Our Ref #142792, 142861 & 142892 – Government of ON – Fait Hydro Plan – Radio Advertisement

And this time with the attachment.
Regards,
Karen

From: Evans, Karen (ENERGY)
Sent: September-19-17 5:09 PM
To: 'yamina.bennacer@adstandards.com'
Cc: Cusimano, Jo-Anne (ENERGY); Sloan, Laurie (MGCS)
Subject: RE: Our Ref #142792, 142861 & 142892 – Government of ON – Fait Hydro Plan – Radio Advertisement

Hello Yamina,

Please find attached Energy's response to files referenced above.

I am hopeful that you will forward this on to Ms Feasby.
Please let me know if that is not the correct procedure.
And, please accept my sincere apology for the delay.
Regards,
Karen

Karen Evans
Director, Communications Branch(A)
Ontario Ministry of Energy
4th Floor, Hearst Block, Queen's Park
900 Bay Street, Toronto, ON M7A 2E1
O: 416-327-6541 C:416-705-9637

From: Mennie, Sharon (MGCS)
Sent: August-15-17 9:11 AM
To: Evans, Karen (ENERGY)
Subject: FW: Our Ref #142792, 142861 & 142892 – Government of ON – Fait Hydro Plan – Radio Advertisement
Importance: High

Hi Karen,

Please see the attached correspondence from Ad Standards Canada, which requires a written response from the ministry.

Kindly note this response is due to ASC no later than August 28.

Best regards,

If you'd like to receive this document in a more accessible, alternative format, please contact me.

Sharon Mennie

Senior Communications Advisor
Advertising Review Board
Ministry of Government & Consumer Services
Room M2-56, Macdonald Block
900 Bay Street
Toronto, ON M7A 1N3
(416) 327-2221
Sharon.Mennie@ontario.ca

From: Bennacer, Yamina <yamina.bennacer@adstandards.ca>
Date: Monday, Aug 14, 2017, 5:46 PM
To: Sloan, Laurie (MGCS) <Laurie.Sloan@ontario.ca>
Subject: Our Ref #142792, 142861 & 142892 – Government of ON – Fait Hydro Plan – Radio Advertisement

Hi Laurie,

Please find, attached, important correspondence from Advertising Standards Canada requesting your comments regarding the above-mentioned consumer complaint.

If you have any questions, please feel free to contact me.

We look forward to your response.

Sincerely,

Yamina Bennacer
Manager, Standards
Tel: 416 961-6311 x 249
yamina.bennacer@adstandards.ca

Ad Standards™

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23134970-v2-BCG Comments - Response to Advert_2.pdf

Ministry of Energy

Communications Branch
4th Floor, Hearst Block,
900 Bay Street
Toronto, ON M7A 2E1
Tel: 416-327-6541

Ministère de l'Énergie

Direction des Communications
4e étage, Édifice Hearst,
900, rue Bay
Toronto, ON M7A 2E1
Tél: 416-327-6541

May 15, 2017

Ms. Janet Feasby
Vice President, Standards
Advertising Standards Canada
175 Bloor Street East
South Tower, Suite 1801
Toronto ON M4W 3R8

Dear Ms. Feasby:

Re: Ref. #142128 – Government of ON - Hydro Rates Reduced by 25 per cent - Radio Advertisement

Thank you for your letter which was forwarded to me by Laurie Sloan at the Advertising Review Board. As requested, attached is a copy of the radio advertisements as recorded. Below you will find our comments on the merits of this complaint raised regarding advertising of Ontario's Fair Hydro Plan ("**OFHP**").

We ask that the ASC decline to accept or proceed further with this matter and not refer the matter to a council hearing for the following reasons:

1. The advertisements were approved by an agency of the government.
2. The radio advertisements are no longer running and are not intended to be re-run in their current form.
3. Most importantly, the advertisements do not contain any inaccurate, deceptive or misleading statements or claims.

1. The advertisements were approved by the Government of Ontario

The *Canadian Code of Advertising Standards* states:

> ASC or Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that:
>
> …

23134970.2

c. the advertising, or such part of the advertising to which the complaint refers:

i.v. has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government; …

As the advertisement is a communication by an agency of the Ministry of Energy (Ontario), the ASC must decline to accept or proceed further with this complaint.

[NTD: discuss the approval process for the advertising]

It is important to note that the advertising reflects the change in pricing implemented by the Ontario Energy Board, which is an agency of the Government of Ontario. As set out on OFHP website:

> On May 1, 2017, the OEB reduced electricity rates across the province for all Regulated Price Plan (RPP) eligible customers, which included a portion of Ontario's Fair Hydro Plan. This means households, small businesses and farms will see real savings sooner than expected.
>
> If legislation is passed, the OEB would be required to lower rates again within 15 days after Royal Assent to meet the government's commitment to cut electricity bills by 25% on average for all households and as many as half a million small businesses and farms.

2. Radio advertisements are no longer in market

The OFHP is a new, multi-pronged program aimed at reducing hydro bills by an average of 25 per cent for residential consumers. The OFHP as announced on March 2, 2017 included the following components:

- Deferral of a portion of the costs associated with the global adjustment. The government has also committed to holding increases in bills to the rate of inflation for four years.
- An eight per cent rebate equivalent to the provincial portion of the HST which was introduced in January.
- Enhancements to the Rural or Remote Electricity Rate Protection (RRRP) program, to be funded from provincial revenues, resulting in rate savings for electricity consumers.
- Expansion of the Ontario Electricity Support Program and funding of that program by government revenues instead of ratepayers. As of May 1, 2017, more people are eligible for the program and credits have increased by up to 50 per cent.
- Introduction of the Affordability Fund to assist homeowners with energy efficiency initiatives.
- Creation of a new First Nation's on-reserve delivery credit.

The Province launched an advertising campaign to support this program on March 13, 2017. The message introducing the proposed OFHP was communicated through multiple media channels, intended to reach a wide ranging audience and to convey the multi-faceted elements of the program outlined above.

Communications included the 30 second radio spots as well as digital display ads, news media outreach, announcements from the Premier of Ontario and the Minister of Energy, as well as a unique webpage dedicated to the OFHP. The 30 second radio spots were intended to generate interest in the OFHP and direct people to sources for more information.

The mediums that allowed for more content elaborated on the details of the OFHP and also included language explicitly indicating that the 8 per cent rebate was included in the 25 per cent reduction.

The radio buy for the advertisements in issue ended on April 28, 2017 and those radio ads are no longer running. Those communications are not intended to be used again. However, additional advertising for the OFHP is planned to commence this summer, including radio advertising that will use a new script.

Moreover, all of the information regarding the OFHP, including how rates are set by the Ontario Energy Board, continues to be available on the Ontario.ca website.

3. The advertising does not contravene the Code

Most importantly, the advertising is accurate and is not false. The consumer's complaint was that the radio ad claimed that hydro rates were being decreased by 25% and that this was misleading because the 25% discount included the 8% rebate. However, when the radio script is actually reviewed, it is clear the ad focuses on the hydro bill for consumers being 25% less. The radio ad makes no claim that the hydro rate itself has decreased by 25%.

The radio advertisement's inherent audio-only format, as well as the limited 30 seconds of the ad unit, did not allow for inclusion of all details of the OFHP in this single medium (including the components that contribute to hydro bills being decreased by 25%). The radio spot contained a call to action that directed listeners to our dedicated webpage to "Find out more about your reduction at Ontario.ca/FairHydroPlan." This is consistent with advertising practice, where customers are directed to a website to find more information about the programs and the claims being made.

The statement in the media release posted on Ontario.ca included the following*:*

> *"Starting this summer, Ontario's Fair Hydro Plan would provide households with this 25 per cent break. Many small businesses and farms would also benefit from the initiative. People with low incomes and those living in eligible rural communities would receive even greater reductions to their electricity bills. As part of this plan, rate increases over the next four years would be held to the rate of inflation for everyone. These measures include the eight per cent rebate introduced in January and build on previously announced initiatives to deliver broad-based rate relief on all electricity bills."*

The consumer also makes reference to a clean energy rebate expiring and a 2% increase in rates when HST was removed. Please note that the energy rebate the consumer is referring to ceased in 2015 and none of that is relevant to our calculation of a 25% decrease in the amount that consumers will pay.

For the reasons set out above, we therefore respectfully submit that the ASC must decline to accept this complaint or to proceed further with this matter. Should you have further questions, we would be pleased to address them.

Sincerely,

Karen Evans or TBD
Director

c: Laurie Sloan, Managing Director, Advertising Review Board
[Copy Blakes?]

Re_ MOE - ASC Letter.pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY)
Subject:	Re: MOE - ASC Letter
Date:	October 16, 2017 10:57:09 AM
Attachments:	TOR_2528-#23223169-v2-Letter_-_ASC_re_Ontario_Fair_Hydro_Plan.docx

Privileged and Confidential

Hi Alena,

Attached is a draft letter that attempts to marry my initial outline with the draft that Karen prepared on Friday.

A few draft notes for your consideration are highlighted in yellow.

Please let me know if you would like to discuss.

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com
Dir: 416-863-4187
Cell: 416-471-2068

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Joshua A. Krane
Partner
Dir: 416-863-4187
joshua.krane@blakes.com

October **[25]**, 2017

Reference: 14229/1

VIA E-MAIL
CONFIDENTIAL

PRIVILEGED AND CONFIDENTIAL – DRAFT

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

Dear Mr. Engle:

ASC Ref. # 142792, 142861 and 142892 – Fair Hydro Plan

We are writing in response to Janet Feasby's letter of September 25, 2017 and our call with you and Ms. Feasby of October 3, 2017. The Ministry of Energy would like to assure the ASC that its advertising is intended to inform Ontarians about the substantial benefits of new legislation designed to reduce hydro bills for residential consumers and is in no way intended to mislead consumers about the Fair Hydro Plan Program ("**Program**"). To ensure that the Ministry addresses the ASC's concerns in a satisfactory manner, the Ministry has temporarily withdrawn the claims per our email exchange of October 5, 2017. Despite these temporary measures, the Ministry stands behind the truthfulness of the messaging and intends to continue communicating with Ontarians about the benefits of the Program once this matter is resolved.

A. SUMMARY OF THE ISSUES

As a preliminary matter, the Ministry's position is that, with the exception of the complaint related to the improved reliability of Ontario's electricity system, the two other complaints – i.e., pertaining to the 25% reduction of household electricity bills and bill affordability – are "non-reviewable" in accordance with the ASC's *Consumer Complaints Procedure* ("**Procedure**"). As explained in more detail below, the regulations under the *Ontario Fair Hydro Act, 2017* (the "**Act**") specifically authorize the making of these claims.[1] Additionally, the regulations require electricity suppliers to make such claims on their invoices and on bill inserts. Thus, it would be inconsistent with the regulations for the ASC to declare that the Ministry amend or withdraw advertising containing the very claims that the elected representatives of the Ontario Legislature and Cabinet have required electricity suppliers to make. On this basis alone, the ASC should reconsider whether it is appropriate to pursue these complaints further.

[1] *Ontario Fair Hydro Plan Act, 2017*, S.O. 2017, c. 16, Sched. 1, online: https://www.ontario.ca/laws/statute/17o16.

23223169.2

On our October 3, 2017 call, you indicated that the ASC received complaints in respect of three specific claims:

1) "Household electricity bills will be an average of 25% less" ("**25% reduction claim**");

2) "Recent changes have made bills more affordable" ("**affordability claim**"); and

3) "Upgrades to our [Ontario's] electricity system have made it more reliable for Ontarians" ("**reliability claim**").

None of these claims contravenes the *Canadian Code of Advertising Standards*. In brief, and as discussed in more detail below:

1) The 25% reduction claim is accurate and does not contravene section 1(a) of the Code.

- The Act and accompanying regulations task the Ontario Energy Board ("**Board**") to take measures to ensure that an average residential consumer receives an invoice that is 25% less than the consumer would have received in the absence of the Program.

- The Board implemented a number of measures to reduce consumer invoices, including: 1) lowering time-of-use prices (electricity rates), 2) removing the fees associated with electricity support programs, and 3) granting an 8% rebate for the provincial portion of the HST.

- As a result of these measures, the average consumer now receives a monthly bill of $121, which is 25% lower than the $162 bill that the consumer would have received absent the program.

2) The affordability claim does not contravene section 1(b) of the Code since it is properly qualified and does not omit relevant information about long term costs.

- Contrary to the complaint, the representation in issue actually states: "Recent changes have made electricity bills more affordable. By this summer, household electricity bills will be an average of 25% less, <u>and electricity rates won't increase beyond the rate of inflation for four years</u>." The time limitation for the affordability claim is clear: rate increases will be held to inflation for four years.

- The Government is not under any obligation to include in its advertising what might happen after four years, just like any other advertiser that advertises new, lower prices on a product or service. The advertiser is free to choose whether to subsidize the lower prices from current or future revenues and is under no obligation to disclose this to the public.

- Furthermore, the Government has taken additional steps to reduce electricity bills in the short term and system costs in the long term by implementing programs to support farms, businesses and consumers on First Nations reserves, implementing more competitive procurement programs and deferring new plant construction, and enhancing the efficiency of the electricity market.

3) The reliability claim is supported by competent and reliable evidence and thus does not contravene section 1(e) of the Code.

- Since 2003, the Government has invested more than $70 billion in clean generation, conservation and improving Ontario's transmission and distribution grid. As a result, **[NTD: insert statistics demonstrating that the electricity generation and distribution system is more reliable today. See draft note in Section 3 below]**

B. DISCUSSION

Preliminary Issue: The 25% reduction claim and the affordability claim are non-reviewable complaints under the Procedure.

Under the Procedure, the "Council shall decline to accept, or to proceed further with, a complaint, or any part thereof, where it is of the opinion that: the advertising, or such part of the advertising to which the complaint refers … has been, specifically, approved by an agency (or some other comparable entity) of the Canadian Government." Although the Procedure does not define the term "Canadian Government", we understand that the ASC's position is that the provision is intended to apply to situations where the advertisement has been authorized by a government entity and thus could not, under law, be found to be false or materially misleading.

The Ministry's view is that the ASC should declare that the complaint is non-reviewable since the claims in issue have been specifically authorized by regulations promulgated by the Province's elected representatives.

By way of background, on June 1, 2017, Bill 132 (the Act) received Royal Assent and entered into force. Section 7 of the Act requires that the Board take measures to ensure that the average consumer receives an invoice that is 25% less than the consumer would have received in the absence of the Program. Section 11 of the Act authorizes the provincial Cabinet to make regulations that set out the applicable methodologies for reducing a consumer's bill.

Ontario Regulation 195/17: *Fair Adjustment under Part II of the Act* ("**Fair Adjustment Regulation**") explains how the reduction in the invoiced amount is to be achieved. Section 3 of the Fair Adjustment Regulation requires that the total invoice paid by the average consumer must be 25% lower than the invoice would have been absent the adjustment by the Board.

> **Regulated rate consumers, first fair adjustment under s. 7 of the Act**
>
> 3. For the purposes of section 7 of the Act, the Board shall determine the rates that would, when applied for the purposes of determining the commodity price of the

electricity included in Total Invoice Amount B, result in Total Invoice Amount B being 25 per cent less than Total Invoice Amount A.

In a separate regulation, Ontario Regulation 196/17: *Invoicing Requirements* ("**Invoicing Requirements Regulation**"), Cabinet specifically mandated the use of certain statements on electricity bills. Section 1 of the Invoicing Regulation states that invoices must include the following statement:

> *"Ontario's Fair Hydro Plan substantially lowers electricity bills for typical residential consumers. This includes the eight per cent rebate introduced in January 2017, and builds on previous initiatives to deliver broad-based relief on all electricity bills."*

Section 2 requires that paper invoices must include bill inserts that feature the following statements in reasonably prominent locations on the face of the bill insert: "Ontario's Fair Hydro Plan" and "Bringing electricity bills down". Moreover, the insert must contain the following wording:

> *Ontario's Fair Hydro Plan*
>
> *Electricity bills will be lowered by 25 per cent on average for residential consumers*
>
> *Rate increases will be held to inflation for four years*
>
> *As many as half a million small businesses and farms will also benefit from this reduction*
>
> *Lower-income Ontarians and those living in eligible rural communities will receive even greater reductions, as much as a 40 to 50 per cent cut*
>
> *The benefit will vary for individual consumers depending on electricity usage and service territory. These measures include the eight per cent rebate introduced in January 2017 and build on previous initiatives to deliver broad-based relief on all electricity bills.*
>
> *To find out more, visit ontario.ca/FairHydroPlan.*

Electricity suppliers must include these bill inserts at least once every quarter in the case of specified consumers billed on a monthly basis or twice during the period in the case of consumers billed on a seasonal basis. The Minister can authorize electricity suppliers to use different wording if the supplier cannot incorporate the above-noted language onto its invoices.

In essence, the very claims that are at the subject of the complaints before the ASC have been specifically authorized by the elected representatives of the Province. If electricity suppliers are required by law to make the 25% reduction claim and the affordability claim, then surely the Ministry and other agencies of the Government of Ontario can make the same claims free of scrutiny from the ASC, the Competition Bureau or the courts.

On this basis, the Ministry asks that the ASC declare the 25% reduction claim and the affordability claim “non-reviewable” complaints.

Issue 1: The 25% reduction claim is accurate and does not contravene section 1(a) of the Code.

The Board implemented the following measures to reduce invoiced amounts to residential consumers by an average of 25%:

- A portion of the fixed costs of running Ontario’s power generation fleet and conservation programs were refinanced over a longer term. This accounted for a 15% reduction to the Electricity line on hydro bills. To achieve the reductions for consumers, the Board lowered the time-of-use prices per kilowatt hour (kWh) effective July 1, 2017.

- The Board shifted the costs associated with social support programs such as the Ontario Electricity Support Program and the Rural or Remote Protection Program from rate payers to the general revenue fund, resulting in a 2% reduction.

- The Government issued an 8% rebate for the provincial portion of the HST.

The Board determined that the rates effective July 1, 2017 under the Program resulted in an average monthly bill of $121, which is 25% lower than the $162 bill the consumer would have received absent the program.[2]

Issue 2: The affordability claim does not contravene section 1(b) of the Code since it is properly qualified and does not omit relevant information about long term costs.

Contrary to the complaint, the representation in issue actually states: “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.” The time limitation for the affordability claim is clear: rate increases will be held to inflation for four years.

The Ministry is not under any obligation to include in its advertising what might happen after four years, just like any other advertiser that advertises new, lower prices on a product or service. The Government is free to choose whether to subsidize the lower prices from current or future revenues and is under no obligation to disclose this to the public.

The 30-second radio advertisements directed consumers to the ontario.ca/fairhydroplan website where they could learn more about the Program. The website makes it clear that after four years, prices could increase, although the Government also indicates on the website that it will find opportunities to reduce costs to address affordability issues in the long term.

---

[2] A “proxy” or “average” consumer uses 750 kWh of electricity per month and has a typical time-of-use profile.

In addition to the 25% reduction in the average bill, the Government has also taken steps to reduce electricity bills in the short term and system costs in the long term.

- The Government implemented additional programs to reduce the invoiced amounts for farms and businesses as well as increased support – as much as 30 to 40% – for rural and remote customers. On-reserve First Nations consumers and vulnerable Ontarians are benefiting from even greater reductions.
- The Government amended the Green Energy Investment Agreement, reducing Feed-in Tariff prices, introducing a competitive process for procuring power from large renewable energy projects and deferring the construction of new nuclear units to reduce system costs.
- The Government will release an updated Long-Term Energy Plan (LTEP) this year. The 2017 LTEP will focus on continuing to take additional costs out of the electricity system. For example, the IESO's Market Renewal initiative will result in meeting future system needs at the lowest cost by creating a more efficient marketplace with competitive and transparent mechanisms. This is expected to save up to $5.2 billion over a 10-year period and forms a key component of Ontario's plan to ensure the affordability of electricity in the longer term. **[NTD: MOE, can we provide additional detail here?]**

Issue 3: The reliability claim is supported by competent and reliable evidence, and thus does not contravene section 1(e) of the Code.

Since 2003, the Government has invested more than $70 billion in clean generation, conservation and improving Ontario's transmission and distribution grid. Among the measures taken to enhance the reliability of Ontario's power grid include:

- The addition of new natural gas supply to support reliability in Northern and rural communities.
- Programs and incentives to increase the amount of generation in the marketplace from renewable sources, including the contracting of ● MW of new generation as of 2016.
- The introduction of the Feed-in Tariff and MicroFit programs to encourage new and smaller scale generator participation.
- Enhancing competition by allowing new generators to participate, encouraging market pricing and adding electricity as a backstop should power be in short supply.
- The creation of new interconnections with the electricity systems in Manitoba, Michigan, Minnesota, New York and Quebec to backstop tight supply situations for Ontario and surrounding markets.
- Updated codes and standards to increase efficiency in our homes and in business operations, to reduce overall electricity demand.

As noted in the attached documents, Ontario's generation and transmission system is more reliable today.

- Ontario has an additional 8 gigawatts of capacity and produces four terawatt-hours more electricity compared to the same period 10 years ago.

- **[NTD: insert other examples of how the system is more reliable. Are there fewer outages? Are the blackout periods shorter/less frequent? Fewer customer complaints? Ability to restore service faster after major events, such as snowstorms?]**

- **[Support with reference to documents to be enclosed with the submission]**

C. NEXT STEPS

The Ministry thanks the ASC for bringing these concerns to its attention and providing an opportunity for the Ministry to respond. We would appreciate receiving the ASC's feedback as soon as possible in order to come to a satisfactory resolution of this matter. Due to the nature of the ads and the advertiser, we would also appreciate the opportunity to discuss any continuing concerns that the ASC may have in respect of the advertising before any further steps are taken to refer this matter to the Standards Council.

Thank you again for your consideration of our position.

Yours very truly,

Joshua A. Krane

c. Karen Evans, *Ministry of Energy*
Lorie Sloan, *Advertising Review Board*
Alena Thouin, *Legal Services Branch*

Re_ MOE - ASC Matter - Privileged and Confidential(1).pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY)
Subject:	Re: MOE - ASC Matter - Privileged and Confidential
Date:	September 29, 2017 11:22:25 AM

Privileged and Confidential

Alena,

I spoke with Rafe Engle this morning.

Here is where we stand:

1. Rafe seems to think there is a call scheduled with Lorie Sloan next Tuesday. We might want to confirm with Lorie this call is taking place. If so, you and I should probably attend – and it should proceed on a *without prejudice* basis.

2. I asked Rafe to go back to the ASC and identify the specific concerns it has with the ads. I expect we will hear these concerns on Tuesday if the call proceeds. Rafe confirmed that the ASC is not treating this matter as "retail advertising" meaning the ASC will not require the publication of corrective notices if it determines the representations contravened the *Code*.

3. We should inquire internally about the procedure under which the ad was authorized at the MOE. Did the Auditor General's office review and approve the ad? If so, did it consider the truthfulness of the claim as part of its authorization? Is there an internal memo supporting this?

4. Rafe understands the timing constraints. The ASC will typically extend a timeline if an advertiser agrees to withdraw the advertising temporarily. To the extent that the Fair Hydro Plan website is the only in-market ad, the MOE should consider taking down the page temporarily until we can work to resolve the ASC's concerns. Is this going to be an issue?

Happy to discuss today.

I am offline as of 4:00 pm for the Yom Kippur holiday, but available on Sunday or early next week to discuss.

Josh

Joshua A. Krane
Partner
joshua.krane@blakes.com
Dir: 416-863-4187
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Blakes

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Re_ MOE - ASC Matter - Privileged and Confidential_1.pdf

From:	KRANE, JOSHUA
To:	Thouin, Alena (ENERGY)
Subject:	Re: MOE - ASC Matter - Privileged and Confidential
Date:	September 29, 2017 3:56:42 PM

Hi Alena.

No problem on all counts.

Have an easy fast.

Josh

Joshua A. Krane
Partner
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Dir: 416-863-4187
Cell: 416-471-2068

On Sep 29, 2017, at 3:29 PM, Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>> wrote:

Hi Joshua
I ran out of time for today to respond, but some updates

1. Yes we will join Lorie, will send invite, we can chat Monday

2. Will send revised deck on Sunday

3. DM briefing on Monday afternoon, I will send you invite, please attend by phone (just yourself please, unless someone is necessary)

Thank you!

From: KRANE, JOSHUA [mailto:JOSHUA.KRANE@blakes.com]
Sent: September 29, 2017 11:22 AM
To: Thouin, Alena (ENERGY)
Subject: Re: MOE - ASC Matter - Privileged and Confidential

Privileged and Confidential

Alena,

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Here is where we stand:

1. Rafe seems to think there is a call scheduled with Lorie Sloan next Tuesday. We might want to confirm with Lorie this call is taking place. If so, you and I should probably attend – and it should proceed on a without prejudice basis.

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Happy to discuss today.

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Josh

Joshua A. Krane
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<image001.gif>

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Re_ MOE_ASC Matter - Work Plan - Privileged and....pdf

From: KRANE, JOSHUA
To: Thouin, Alena (ENERGY)
Subject: Re: MOE/ASC Matter - Work Plan - Privileged and Confidential
Date: October 3, 2017 4:15:48 PM

Privileged and Confidential

Alena – below is a proposed work plan for review, comment and/or circulation to the team.

I'm not sure who is going to be responsible for some of the tasks, so I have left "●" in some of the cells.

The proposed deadlines are based on obtaining ASC feedback by the end of the month so the new MOE policy agenda can move forward as scheduled.

Happy to discuss.

Josh

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TASK	RESPONSIBLE	DEADLINE	STATUS
Prepare internal distribution list	Alena Thouin	Oct. 4	In progress
Confirm removal of YouTube video, removal of Overview on FHP website, and edits to MOE website	Karen Evans	Oct. 4	In progress
E-mail to ASC confirming temporary withdrawal of ads	Josh Krane	Oct. 4 or 5	TBC
Brief DM's office and assess timing for response	Karen Evans Lorie Sloan	Oct. 6	TBC
Topic 1 Draft rider for letter submission to ASC addressing non-reviewability due to regulatory authorization	Josh Krane	Oct. 11	TBC
Topic 2 Draft rider for submission addressing accuracy of 25% reduction claim	●	[Oct. 12]	TBC
Topic 3 Gather back-up materials for reliability claim	●	[Oct. 12]	TBC
Draft rider for submission addressing reliability claim	●	[Oct. 12]	TBC
Topic 4 Draft rider for submission addressing "affordability" claim	●	[Oct. 12]	TBC
Compile riders and circulate draft submission	Josh Krane	[Oct. 17]	TBC

MOE and others to provide comments	MOE, Cabinet Office	[Oct. 19]	TBC
Circulate revised draft submission	Josh Krane	[Oct. 23]	TBC
DM sign off on submission	Serge Imbrogno	[Oct. 25]	TBC
Submit response to ASC	Josh Krane	[Oct. 26]	TBC
Follow-up with ASC for preliminary feedback	Josh Krane	[Oct. 30]	TBC

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