Backpocket Only

Confidential/Solicitor-Client Privileged

need IESO to be [illegible]

may ✓

OPG's Unresolved Issues List – April 5, 2017

OPG Position	Ministry Comment	IESO Comment
1. A Financing Entity (FE) ~~will not be~~ required to purchase a ~~Regulatory Asset~~ from IESO unless it is able to finance the purchase.	This is an OPG "ask", not a market requirement. → get an opinion [illegible] → → not [illegible] test → [illegible] → market may not be available at a price → may not be [illegible] → is the recoverable? → 10% [illegible] → [illegible]?	Understand why this would be your position. However I do not believe that it is intended that the IESO' s obligation to finance and effectively warehouse the deferral would be so qualified. In the circumstances we need a thoughtful appraisal of the financibility risk and a discussion of what Plan B is if that that risk eventuates
2. The legislation must require the Province to appoint a successor to carry out the duties of IESO in the event is IESO is restructured, dissolved or becomes insolvent.	We agree that the obligations to collect money from rate payers and ultimately remit that money to the Financing Entity must survive restructuring, dissolution and insolvency. This applies to both LDCs and IESO. Need to discuss whether it is the Province or someone else [market participants?] who selects a successor. Blakes contemplates that obligations survive and the "Regulatory Asset Owner" will appoint an "Alternative Invoicing Agent"	→ condition precedent → [illegible] is a [illegible] → → OFA → shall cause → → Goldman / RBC / TD → what can be [illegible] →
3. The legislation must provide that if there is a change of Provincial law (including regulations, etc.) that adversely impacts the ability of a Financing Entity to fully recover a Regulatory Asset in order to fully repay all indebtedness incurred by a FE to purchase such Regulatory Asset, the	We generally agree that the market will require a backstop from the Province. Need to discuss circumstances in which it arises, the scope and the form (e.g. in contract, rather than legislation).	Springing guarantee + legislation → may [illegible] the party

→ some flexibility

→ [illegible] →

3P –

what does IESO [illegible]? → [illegible] OFA?

Province will indemnify and hold the creditors of the FE harmless against all loss.		
4. There can be no additional impairment on the ability to recover Regulatory Assets after the first five years of the program (that is, no limit on year over year increases).	We generally agree that the market will need to know that it can recover its investment. Need to discuss whether there is any room to scope future recovery (e.g. cap on rates).	10 yr. → 2042 → [illegible]
5. There is a strong preference to have no oversight or other role for the OEB; however, to the extent required in order for the Regulatory Asset to be treated as an asset of the FE under GAAP, it would be possible for the OEB to have limited oversight over the FE's expenses so long as such oversight may not extend to the Qualified Costs necessary to recover all principal and interest and other financing charges on the debt incurred by the FE to purchase the Regulatory Asset.	Role of the OEB is still in development. Need to confirm accounting requirement that OEB must be involved in creation of regulatory asset. absolute minimum role for the OEB – to achieve accounting treatment. (O&M expenses?)	clarify the regulatory asset [illegible] 2032 → maturity risk may be extended [illegible]
6. The legislation must provide that any transfer, sale, conveyance or assignment of a regulatory asset to a FE is conclusively considered to be a sale for all purposes and may not be re-characterized or found by a court to be a loan or any other arrangement.	We agree that the disposition of the asset must be conclusively considered to be a sale. We have built in draft language around this issue and need to consider it further. We also need to consider whether we can go so far as to constrain the findings of a court through legislation. true sale	This raises the characterization, attachment and constitutional issues I have been discussing. The IESO' s interest in these issues relates to the nature and extent of any representations it may be asked to provided, the nature and extent of any representations IESO' s counsel may be asked to provided, the impact on disclosure (particularly if the IESO is required to be party to an offering document) and the impact upon

		financibility (particularly to the extent that all or some portion of that brisk is borne by the IESO).
7. The assignment and granting of a security interest over Regulatory Assets and all proceeds derived therefrom either (i) must be exclusively governed by the Fair Hydro legislation which should provide for the perfection and priority of such assignments and security interests in detail in such legislation, notwithstanding any provisions of the PPSA or any other provincial statute or, (ii) must deem the Regulatory Asset to be an "intangible" for purposes of the PPSA and provide that (a) no perfection is required under the PPSA to perfect the assignment of the Regulatory Asset to a FE, (b) the sale of a Regulatory Asset by IESO to a FE shall be free and clear of any security interest that IESO may have purported to grant over such asset, (c) only a FE may grant a security interest over the Regulatory Asset and (d) perfection and priority of a security interest granted by a FE in a Regulatory Asset is governed by the PPSA on the basis that the Regulatory Asset is an "intangible" thereunder.	We generally agree with the need to allow for creation and assignment of security interests over Regulatory Assets and their proceeds. We need to better understand the purpose and intent of the detailed proposal. True Sale. → Sufficient	
8. The legislation must provide sufficient flexibility for there to be more than one FE, each of which must be permitted to (i) purchase and aggregate Regulatory Assets, (ii) disaggregate and sell	We generally agree that the legislation needs to provide flexibility to OPG to structure transactions in the way that makes the most sense.	We should consider what manner of presentation best addresses the artificial security interest concerns.

Regulatory Assets, (iii) grant security over its Regulatory Assets so as to enable the grantee of the security interest to realize on its security by selling the Regulatory Asset.	We need to understand whether the point about security interest here is different than point #7.	
9. Either provide that (i) the Province will guarantee that the IESO will perform its duties as servicer under any sale and servicing agreement with a FE, or (ii) the FE (acting through OPG as manager or else at the direction of the indenture trustee) must have the right, pursuant to its Regulatory Asset, to direct the LDCs to add additional true up amounts to hydro bills as required to ensure full timely recovery of Regulatory Assets to the extent that the amounts otherwise directed by the IESO are insufficient.	We generally agree that a true up mechanism is required. We need to discuss the mechanism for true up in more detail. It is not clear that the FE needs the ability to direct LDCs. We see the true up mechanism as distinct from any question about a Provincial guarantee that the IESO will perform, which seems to be OPG's attempt to shift risk from itself to the Province. We are not assuming that the IESO will direct the recovery of the Regulatory Asset.	The IESO is concerned that its role be limited to taking reasonable actions to collect, and that it not provide a warranty of collection.
10. The legislation should put a time limit on the period during which IESO can continue to create deferrals under the program. This would provide investors with a necessary level of comfort that at some point ratepayers will be required to pay down the regulatory assets rather than IESO continuing to create deferrals in order to service the debt issued by the FEs.	We have not yet considered the concept of deferrals (as articulated by OPG). We are not assuming that the IESO would create deferrals [although deferrals may be created by another mechanism].	I do not think that deferrals are being created in the discretion of the IESO. Will this not be mandated by legislation.
11. We need certainty around the category of ratepayers who will benefit from the Fair Hydro program and who will ultimately pay for the program (although it may be that this could be left	We agree that the class of rate payers who benefit from deferral and those who will be required to repay it require certainty. We can build flexibility to allow expansion of the	

to the Regulations). A corollary decision that needs to be made is what would happen if (for political or other reasons), the government wishes to expand the category of ratepayers benefitting from the program after the initial launch.	group through regulation, if desired.	
12. In order to ensure that only the category of ratepayers that benefits from the program is left paying for the program, there is likely a need for a retroactive true up by IESO so that the amount deferred by IESO in respect of the Fair Hydro program is the correct amount (in other words, amounts deferred in respect of other programs are not covered by Fair Hydro ratepayers and vice versa).	We need to understand this point more clearly.	
13. No FE may be voluntarily wound up, liquidated or dissolved until the earlier of (i) one year after all of its debt is repaid and (ii) the date designated by the Minister for the winding up, liquidation or dis~~solution of the FE (in~~ which case the indemnity in paragraph 3 would apply).	We agree that changes to ~~the FE cannot occ~~ur if they would impair the Regulatory Asset in any way. We would like to understand why OPG suggests one year. We don't propose to enable the Minister to wind up, liquidate or dissolve an FE.	