FW: OPG Conflicts Issue

From: "Schlaepfer, Martin (ENERGY)" <martin.schlaepfer@ontario.ca>
To: "Imbrogno, Serge (ENERGY)" <serge.imbrogno@ontario.ca>
Date: Wed, 02 Aug 2017 17:43:52 -0400

Hi Deputy,

Please see below. Folks would like your perspective on whether the Ministry would have any concerns if Blakes provided advice to OPG's underwriters in various financing transactions. Tom's email (two below) outlines that, from a purely legal perspective, Blakes proposal would adequately address concerns about the possibility of a conflict in this case, but given the high profile of the OFHP there might be an optics concern from allowing our legal advisers to also advise OPG in an indirectly related matter.

Do you have concerns, or are you ok with Blakes proceeding?

Thanks,
Martin

From: Carson, Cheryl (ENERGY/MEDEI/MRI)
Sent: August 2, 2017 3:22 PM
To: Schlaepfer, Martin (ENERGY)
Cc: Hume, Steen (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); McKinlay, Tom (ENERGY)
Subject: FW: OPG Conflicts Issue

Hi Martin

Tom and I discussed with Steen the question outlined in the email directly below (related to whether the Ministry would have any concerns if Blakes also provided advice to OPG's underwriters in various financing transactions).
We collectively thought it might be good to have the DM weigh in on this issue to see whether he had any concerns.

Thanks and we would be happy to further discuss.

Cheryl

Cheryl L. Carson
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From: McKinlay, Tom (ENERGY)
Sent: Friday, July 28, 2017 1:19 PM
To: Carson, Cheryl (ENERGY/MEDEI/MRI)
Cc: Rehob, James (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI)

Subject: FW: OPGConflicts Issue

Cheryl,

As discussed, Judy Wilson from Blakes has asked for our views on a potential conflict issue. As you know, counsel at Blakes (including Judy, Steve Ashbourne and others) have been providing advice to Ontario in connection with the development and implementation of the Ontario Fair Hydro Plan. OPG has approached other lawyers at the firm about the possibility that Blakes could also provide advice to OPG's underwriters in various financing transactions. The retainer would not relate directly to the Fair Hydro Plan and would be in support of OPG setting up a more general corporate financing programme to "warehouse" liquidity shortfalls experienced by OPG between its regular securitization transactions. However, the advice would relate indirectly to the Fair Hydro Plan in that OPG would likely use the warehouse to fund its debt related to its 5% contribution toward the equity of the proposed financing entity.

Judy has indicated that Blakes would implement an ethical screen to address any risk of conflict. As a result of this screen, lawyers involved in advising OPG's underwriters would not have access to any information or advice related to the Fair Hydro Plan.

I think that Blakes' proposal would adequately address any purely legal concerns about the possibility of a conflict in this case, particularly in light of the fact that we are not really adverse in interest with OPG in connection with the Fair Hydro Plan. Nevertheless, given the significance of this initiative to the Ministry, I am conscious of the prospect of possible communications sensitivities. You will recall that OPG will earn quite a lot of money through the performance of its role in the Fair Hydro Plan (in both fees and interest payments) and it is possible that, at some future point, there could be public controversy about those costs. In such a case, the Ministry could be criticized (however unfairly) for allowing our legal advisers to also advise OPG in an indirectly related matter.

Given that this is really more of a business and relationship issue, I think we should consult with Steen to determine whether he shares this concern. I recognize that the scenario I have outlined is somewhat speculative, and I think it is entirely appropriate for the clients to allow Blakes to accept the proposed retainer if they do not share my concern. However, if Steen and the Deputy are uncomfortable with Blakes' proposal, I think it is also within our rights as a client to indicate that we would prefer that the firm not accept any retainer that is related even indirectly to the financing of the Fair Hydro Plan.

Recall that there is some urgency to this matter because Blakes needs to get back to OPG about our position on the proposed retainer.

Let me know how you want me to proceed.

Tom.

-----Original Message-----

From: WILSON, JUDY [mailto:JUDY.WILSON@blakes.com]
Sent: July-27-17 11:13 AM
To: McKinlay, Tom (ENERGY)
Subject: Re: OPGConflicts Issue

Sorry Tom. I screwed up on one thing. OPG asked us to act for the underwriters on the medium term note programme (not OPG directly-Torys will be on for OPG).

JUDY L. WILSON
Partner
Dir:416-863-5820

On Jul 27, 2017, at 10:28 AM, WILSON, JUDY <
JUDY.WILSON@blakes.com<mailto:JUDY.WILSON@blakes.com >> wrote:

Hi Tom further to our conversation today:
-OPG has asked Blakes to act on the process to set up OPG's corporate financings programme
- Carolyn Calwell asked me to investigate whether these financings would have anything to do with the Fair Hydro Act.
-In response to Carolyn: (i) this program has nothing to do with the securitization under the Act,(ii) the programme will not be used to finance shortfalls that occur between securitizations (the "warehousing"), and (iii) the only relationship to the Fair Hydro Act is an indirect one because OPG will likely use this program to fund its debt related to its 5 per cent contribution to equity of the new trust company.

Hopefully this is all you need to consider this issue. We would, in an abundance of caution, implement ethical walls.
As ever, we are being pressed to give an answer so very grateful for your consideration of this.

Thanks, Judy

JUDY L. WILSON
Partner
Dir:416-863-5820

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