FW: Provincial Protection Agreement - Dealer Comments

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Date: Fri, 15 Sep 2017 14:04:32 -0400

Do you have time for a call?

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All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers would like to discuss. We understand that a meeting is being arranged for Monday.

1. In several places, the term sheet provides that decisions will be made by the Ministers or by the Ministers and the Financing Entity/Manager. There is no reference to the Indenture Trustee/dealers. For example, the third sentence of the document provides that the agreement will include "*such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*" Either all anticipated parties to the definitive agreement should have the benefit of statements of this nature or they should not be included.

2. The clause headed Specified Claims refers to "payment obligations" that are secured. Is there an intention to exclude any Obligations Secured (to use the Trust Indenture term)?

3. There was a request to expand the scope of the regulations covered to include "connected" regulations; the intention being to include the regulations relating to the recovery of interest during the moratorium period through the Global Adjustment. The Province did not make the requested change. Will these GA regulations be covered? They need to be.

4. While we understand the IESO LC for defaulted LDCs and the step-up pricing for warehouse take-out risk are not specifically the subject of this agreement, they are substitutes for provincial protections that were originally requested. We need to have confirmation that these issues have been resolved.

5. The requirement that the change of law have a "material" adverse effect is not acceptable.

6. We do not want the phrase "in a final and non-appealable judgement" being included in the *ultra vires* provision. Investors will be looking for timely payment.

7. We need it to be clear that the exclusion for "economic loss or loss of profits" does not cover the obvious economic loss/loss of profits that occurs when debt is not paid. The exclusion of consequential, special or punitive damages should be sufficient.

8. We need to understand exactly what is contemplated by an obligation to pay under the heading "Obligation to Pay Specified Claims" versus the option to assume under the heading of "Optional Assumption". We do not see a distinction. We also note that in the subrogation section there is a reference to the Obligor as guarantor. Our view is that if a Protection Event occurs, the Province assumes all the obligations and is subrogated to all of the rights of the specified creditors against the Financing Entity and in respect of the clean energy adjustment. The Province can then retain as little or as much of the existing structure as it sees fit.

9. A proposal was made to address the issues arising from a post-default acceleration of the funding obligations by giving the province an option to assume the funding obligations to avoid acceleration. If that option is to be pursued, it would need to be in this term sheet. If it is not the solution, what is the solution?

10. We understand that the obligor approval mechanic has been deferred. Investors will need a provision that contemplates either (a) before each funding obligation is incurred, explicit confirmation by the Province that the provincial protection will apply to the protection, or (b) a process for non-specific approvals that the Financing Entity and the Province agree to implement that includes a provision to the effect that if a funding obligation is issued, the provincial protection is applicable. Put another way, the investors will have no obligation to insure that the province and the Financing Entity/Manager followed their agreed process for approvals.

We look forward to discussing.

Peter

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