[NOTE TO DRAFT: CONFIRM THAT TORYS IS REFERRING TO THE OFA/MOE PROPOSAL FROM SEPTEMBER 27TH.]

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

Accounting Issues:
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input [THERE IS MINIMAL OVERSIGHT AND INPUT FROM THE PROVINCE SO LONG AS THE PRE-AGREED SCOPE AND PARAMETERS ARE ADHERED TO] on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence [THE PROPOSAL IS THAT BASIC INFORMATION REGARDING AN INCURRENCE WILL BE PROVIDED TO ENABLE THE PROVINCE TO (1) UNDERSTAND THE NATURE AND SCOPE OF THE INCURRENCE, TO ENABLE THE PROVINCE TO ADDRESS ACCOUNTING, REPORTING AND INTERNAL GOVERNANCE CONSIDERATIONS AND (2) TO BE SATISFIED THAT THE PROPOSED INCURRENCES ARE IN-LINE WITH THE PRE-AGREED PARAMETERS (THE "OBJECTIVES"). THE INTENTION IS NOT TO CURTAIL INCURRENCES THAT FOLLOW THE PRE-AGREED APPROACH.]
-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt [AS THE ENTITY RUNNING THE PROGRAM, OPG WILL BE EXPECTED TO PROVIDE THE PROVINCE WITH INFORMATION SUFFICIENT TO ENABLE THE PROVINCE TO ACHIEVE THE OBJECTIVES. THE DELIVERY OF A CERTIFICATE IN AN AGREED FORM, JUST PRIOR TO THE TIME OF THE INCURRENCE, IS MEANT TO CREATE A BRIGHTLINE TEST FOR THE FINANCING ENTITY'S COUNTERPARTIES TO KNOW THAT, SO LONG AS THE CERTIFICATE HAS BEEN DELIVERED (EVEN IF IT'S INACCURATE), THE PROVINCE WILL BE BOUND. AS YOU SUGGEST BELOW, ANY INACCURACY WILL GIVE RISE TO CONSIDERATIONS BETWEEN THE PROVINCE AND OPG. THE DELIVERY OF THE CERTIFICATE AT THE TIME OF AN INCURRENCE IS CONSIDERED AN IMPORTANT DUE DILIGENCE CONFIRMATION FOR THE PROVINCE.
WHAT IS THE BASIS FOR E&Y EXPRESSING A RESERVATION REGARDING THE PROVINCE HAVING ACCESS TO UNDERLYING INFORMATION ABOUT THE

"APPROVED OBLIGATIONS", WHICH IN TURN WILL DEFINE THE SCOPE OF THE PROVINCE'S OWN OBLIGATIONS IF CALLED UPON UNDER THE CHANGE OF LAW PROTECTION AGREEMENT (CLPA)?]
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts) [ANY SURETY IN A SIMILAR CIRCUMSTANCE WOULD WANT TO KNOW THE NATURE AND EXTENT OF THE OBLIGATIONS INCURRED AND TO BE INCURRED. THAT INFORMATION IS INTENDED TO ALLOW THE PROVINCE TO MEET THE OBJECTIVES.]
-the negative pledge with respect to the exercise of certain options on the debt [THE IDEA IS THAT IF THERE IS OPTIONALITY IN FAVOUR OF THE FINANCING ENTITY, AND THE EXERCISE WOULD AFFECT THE PAYMENT PROFILE UNDER THE CLPA, SUCH AN EXERCISE FOLLOWING A PROTECTION EVENT SHOULD NOT AFFECT THE PROVINCE'S PAYMENT OBLIGATIONS. IN EFFECT, THE PAYMENT SCHEDULE WILL CRYSTALIZE AND CANNOT BE ACCELERATED OR EXTENDED ONCE THE PROVINCE BECOMES OBLIGATED TO PAY, FOLLOWING A PROTECTION EVENT.]
-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement [THE PROVINCE NEEDS TO UNDERSTAND THE OVERALL CREDIT PICTURE OF THE FINANCING ENTITY SINCE IT WILL BECOME A CREDITOR (THROUGH SUBROGATION) IF IT IS CALLED ON TO PERFORM. EXCLUSIONS ARE NARROWLY DEFINED AND SHOULD BE MINIMAL IN PRACTICE.]

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. [THESE CHECKS AND BALANCES ARE IN-LINE WITH THE PROVINCE NOT WRITING A "BLANK CHEQUE" IN RELATION TO FUTURE INCURRENCES. PRUDENT SURETIES WOULD BE EXPECTED TO PURSUE THE OBJECTIVES - INDEED TO DO LESS COULD BE EVIDENCE OF INTERDEPENDENCE AND NON-ARM'S LENGTH TERMS, WHICH PRESUMABLY WOULD BE UNHELPFUL TO E&Y'S ANALYSIS.] Please also advise if the Province's accountants have reviewed the proposal. [THE PROVINCE'S ACCOUNTING PROFESSIONALS ARE INVOLVED IN THIS PROCESS, INCLUDING IN REVIEWING THESE RESPONSES]

Practical Issues:

- The procedural steps to bind the Province are lengthy and complicated. [THE OFHPA WILL INVOLVE VERY SIGNIFICANT AND COMPLEX FINANCINGS. THE PROCESS IS INTENDED TO PROVIDE AN APPROPRIATE LEVEL OF THIRD PARTY ENQUIRY GIVEN THE SIZE AND SCALE OF THE FINANCING PROGRAM TO THE PROVINCE AND IN ORDER TO MEET THE OBJECTIVES] From our perspective, as drafted, OPG will likely have to seek Provincial approval [NO APPROVAL IS CONTEMPLATED OR EXPECTED BY THE PROVINCE, EXCEPT IF THE INCURRENCE IS OUTSIDE OF THE PRE-AGREED BOUNDARIES. THE ONUS WILL BE ON THE PROVINCE TO REVIEW THE SUMMARY MATERIALS PROVIDED BY OPG AND TO IDENTIFY ANY MATERIAL DEPARTURES FROM THE PRE-AGREED APPROACH TO INCURRENCES] on each debt issuance (which weakens the accounting as discussed above) [AN EXPLANATION OF THE RELEVANT ACCOUNTING PRINCIPLES THAT E&Y HAS EXPRESSED CONCERN ABOUT

WOULD ASSIST THE PROVINCE TO UNDERSTAND E&Y'S CONCERNS. IS THERE AN ACCOUNTING STATEMENT OR PUBLICATION THAT ELABORATES ON THESE MATTERS? ALSO, A DETAILED LIST OF ANY PARTICULAR TROUBLESOME REQUIREMENTS WOULD BE HELPFUL, WITH DRAFTING SUGGESTIONS AS APPROPRIATE] [The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. [FROM THE DEALERS' PERSPECTIVE, THE THREE LISTED REQUIREMENTS (NAMELY, (1) QUANTUM UNDER THE PROGRAM LIMIT (2) DELIVERY OF THE OPG CERTIFICATE (3) ABSENCE OF CONTRARY NOTICE FROM THE PROVINCE) CAN BE EASILY AND OBJECTIVELY VERIFIED BY THE DEALERS. THESE PROCESS REQUIREMENTS SHOULD BE REFLECTED IN THE INCURRENCE PROCEDURES AS A CHECK/BALANCE AT THE RELEVANT TIME, GIVEN THAT THE PROVINCE WILL NOT OTHERWISE BE DIRECTLY INVOLVED IN THE INCURRENCE PROCESS BUT WILL BE OBLIGATED UNDER THE CLPA] Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. [AS NOTED ABOVE, THE THREE LISTED REQUIREMENTS CAN BE EASILY AND OBJECTIVELY CONFIRMED BY THE DEALERS PRIOR TO A CLOSING. INACCURACIES OR OTHER FAILURES WITHIN THE CERTIFICATION PROCESS WILL NOT NEGATE THE PROVINCE'S OBLIGATIONS] We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. [AS NOTED, THIS DUE DILIGENCE CHECK/BALANCE IS HOW THE PROVINCE WILL MEET THE OBJECTIVES. IT IS ANTICIPATED THAT THE MINISTERS WILL SEE THIS PROCESS AS SIGNIFICANT TO THE EXERCISE OF THEIR AUTHORITIES UNDER OFHPA 5(3). ULTIMATELY, THE PROVINCE WILL DEPEND ON OPG, WHICH IS WHY THE DELIVERY OF A CERTIFICATE, WITHOUT BEING IMPUGNED BY AN ACCURACY, IS THE CONTEMPLATED ADHERENCE CONDITION - RATHER THAN MAKING THE CONFIRMATION OF CERTIFICATE ACCURACY A CONDITION, WHICH WE ASSUME WOULD BE UNWELCOME BY THE UNDERWRITERS.] The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification. [THE PROVINCE WANTS AN ACTUAL CERTIFICATE TO BE DELIVERED TO IT (NOT JUST THE INDENTURE TRUSTEE) AS PART OF THE CLOSING PROCESS. ALSO, THE PROGRAM LIMIT AND FAILSAFE DISAPPROVAL NOTICE ARE CONSIDERED TO BE IMPORTANT SAFEGUARDS FOR THE PROVINCE]

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement. [IN THE CASE OF DETAILS NOT KNOWN AT THE TIME THE OPG

CERTIFICATE IS TO BE DELIVERED (WHICH WILL BE EXPECTED TO OCCUR CLOSE TO CLOSING), IT SHOULD BE SUFFICIENT TO INDICATE THE PROCESS BY WHICH THOSE DETAILS WILL BE FINALIZED. FOR EXAMPLE, IT WOULD BE SUFFICIENT TO SAY "INTEREST RATES TO BE SET ON OR ABOUT [DATE] BASED ON UNDERWRITING SYNDICATE PRICING INDICATIONS".]

Drafting Issues:

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered. [THE PROPOSAL USES THE SPECIFIC DEFINED TERMS FROM THE OFHPA AND REGULATION, IN ORDER TO TIE BACK TO THE STATUTE AND APPROPRIATELY NARROW THE SCOPE TO THE OBLIGATIONS THAT ARE REASONABLY KNOWN TO REQUIRE PROTECTION FROM THE PROVINCE. CONSIDERABLE THOUGHT HAS BEEN GIVEN TO THE APPROACH REFLECTED IN THE PROVINCE'S PROPOSAL. THE PROVINCE WISHES TO FOCUS ON EACH INCLUSION THAT REQUIRES THE SUPPORT ARRANGEMENTS, WHICH SHOULD THEN BE NET OF AVAILABLE/FREE CASH FLOWS, SET-OFFS, ETC. PLEASE PROVIDE SPECIFIC COMMENTS ON ANY SPECIFIC ITEMS OF CONCERNS.]
- We'd like to understand the reason OPG's management fees have been excluded. [THIS IS STILL AN OPEN QUESTION UNDER CONSIDERATION.] We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? [UNDER CONSIDERATION] Please advise why taxes are being excluded? [CRA DOES NOT REQUIRE/IS NOT ENTITLED BY LAW TO THE BENEFIT OF THE PROTECTION ARRANGEMENT. PLEASE EXPLAIN THE LOGIC OF THE REQUEST TO INCLUDE TAXES]
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here. [FOR THE PROVINCE'S SUPPORT ARRANGEMENT TO APPLY TO AN OBLIGATION, THE QUANTUM OF THE OBLIGATION MUST BE FACTORED INTO THE PROGRAM MAXIMUM TEST. IF THE OBLIGATION IS A CONTINGENT OBLIGATION, THE PROVINCE'S OBLIGATIONS MUST BE CAPPED SO THAT THE AMOUNT OF THE CAP CAN BE FACTORED INTO THE PROGRAM LIMIT TEST]
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document. [IN THE INTEREST OF TIME, PLEASE PROVIDE ANY OTHER DETAILED COMMENTS YOU MAY HAVE ON THE SEPTEMBER 27TH VERSION OF THE PROPOSAL AS SOON AS POSSIBLE]