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October 23, 2017

Questions for MOE and OFA to consider regarding OPG's Proposed Adherence Terms

A. Scope of Province's Obligations under the Change of Law Protection Agreement (**CLPA**)

1. On a Protection Event, should the Province become responsible for the payment of taxes (if any) owing by the Financing Entity?

2. On a Protection Event, should the Province become liable to pay amounts owing by the Financing Entity to OPG (e.g., FSM fees and expenses)?

3. On a Protection Event, should all available funds (e.g., funds accumulated in sinking funds) be immediately applied to reduce the amount that the Province would be liable for under the CLPA?

4. Should the Province set a "Protection Agreement Maximum" (previously called the "Program Maximum") that measures and relates only to "principal amounts"? In other words, should the limitation be tied only to principal obligations, while the Province's actual obligations would automatically extend, without specific quantum limits, to the other payment obligations under "funding obligations" (e.g., interest, swaps, standby liquidity commitment fees, servicer fees and expenses)?

5. Is the Province comfortable guaranteeing contingent obligations (e.g., indemnity obligations) of the Financing Entity? If so, should the Province require that such contingent obligations be "capped" within the funding obligation itself or should the exposure of the Province be otherwise limited under the CLPA?

6. Should the Province be required to deposit funds to meet sinking fund or collateral deposits (i.e., deposit obligations incorporated in the financing structure on the basis that the "clean energy" cash flows will service the obligations, rather than the Province), notwithstanding that the Province would have become primarily liable for payment obligations under the CLPA?

B. Adhesion

7. Is the Province okay splitting the maximum exposure limitations and "process-related" matters (see below) into a separate agreement - away from the terms of the agreement under which the Province's payment obligations would bind the Province opposite the Indenture Trustee? OPG proposes this in order to keep the optics of the CLPA as simple and straightforward as possible. In other words, is the Province prepared to leave all of the important details regarding what OPG is supposed to do before incurring an obligation that binds the Province to a side agreement with OPG, that is opaque to the Indenture Trustee and Underwriters at the time a funding obligation is incurred and not requiring any third party to have notice or regard to the Province's requirements?

8. OPG proposes that delivery of an officers' certificate to a third party, in OPG's capacity as FSM, will in and of itself bind the Province under the CLPA. That certificate would simply indicate that the Province is bound under the CLPA with respect to the specified funding obligation. It would not be addressed to the Province (although a pre-closing certificate is contemplated to be delivered to the Province) and the "Protection Agreement Maximum" concept would not be incorporated as a specific condition (other

than to the extent that OPG is bound to the Province under the side agreement with the Province). Is this acceptable to the Province? Does this raise any governance/authority issues for the Province (e.g., limit on incurrence needing to be specifically confirmed at closing? scope of permitted delegation to bind? FAA compliance?)

C. <u>"Protection Agreement Maximum" (formerly "Program Maximum" (**PAM**)</u>

9. OPG proposes that the PAM will be determined based on a mechanical calculation and without any real discretion on the part of the Province to set or object to the PAM. Is this acceptable to the Province?

10. OPG's proposed mechanical process to determine PAM would be based on OPG's 24 month forecast (estimate) of payments to be made by the Financing Entity. So long as that forecast (and any refresh) is consistent with the "Financing Plan" (also prepared by OPG) and is "reasonably expected to align with the fair allocation amount", the Province will be required to accept the PAM based on OPG's forecast – i.e., no discretion to reject or modify the aggregate amount of the Province's commitment initially or from time to time. Is the Province prepared to tie its CLPA obligation automatically to the operation of the OFHPA in this way, without review and with perpetual effect?

11. Is the proposed mechanical link to the OFHPA calculations consistent with the OIC or other governance requirements applicable to the Province's authority to approve the CLPA?

12. Is the initial 24 month forecast period appropriate (e.g., 2.5B x 2 – large)? Is OPG's proposed refresh of the PAM (mechanically tied to the new forecast), 9 to 12 months prior to the end of the 24 month forecast period, appropriate?

D. <u>"Process-Related" Matters</u>

13. Assuming the Province is okay with the arrangements described in question 7, above, we would envision a mechanism where the Province could give the Indenture Trustee notice of a breach (if known) by OPG of the PAM or process-related side agreement, and that such a notice would have the effect of cutting off the application of the CLPA for any future incurrences unless the Province further agrees otherwise. Does the Province agree that this sort of failsafe is essential? Note that OPG's suggestion has been that no pre-incurrence non-adherence/failsafe provision be provided, in order to allow the Province to provide notice that the CLPA will not apply to a pending/proposed incurrence.

14. Does the Province need to contemplate other scenarios where the CLPA would become ineffective in respect of future incurrences, such as:

    a. an OPG change of control

    b. a policy-based determination by a future government

    c. an unanticipated circumstance, such as the incurrence by the Financing Entity of assessed tax liabilities, indemnity payments, "increased costs", rating downgrades, offering disclosure-based claims, defaults under the program, insolvency of a major counterparty (e.g., swap counterparty or services provider), etc.

d. a discretionary circumstance where the Province decides it no longer wishes to be liable under the CLPA?

We expect that OPG would push back so that any suspension of new obligations by the Province would not hamper OPG's ability to complete an anticipated/needed refinancing.

15. Does the Province have any reservations about letting OPG at any time provide a binding certificate to third parties regarding adherence, which would be determinative of the Province's obligations. What conditions for this sort of certificate would make sense (e.g., preview and consent by the Province)? Does this proposal raise any governance/authority issues for the Province (e.g., scope of delegation; FAA compliance)?

16. If the Province is prepared to be liable for taxes owing by the Financing Entity (see question 1, above), what oversight, assurances, documentation and reporting regarding the potential for entity-level taxes should the Province require (if any)?

17. OPG is proposing that the Province will receive a certificate prior to the Financing Entity incurring a funding obligation, that sets out "the material terms of the funding obligations pertaining to the principal amount, pricing and third party fees". Is that a sufficient amount of detail, or would the Province like to specifically itemize its information expectations, to cover things such as:

    a. details respecting any principal obligation, such as:

        i. the amount, timing and conditions of repayments (including any redemption or extension rights)

        ii. the basis for OPG's expectations regarding the availability of any related refinancings

        iii. any required deposits to be made into a capital account or a finance reserve account in order to provide for payment of the principal obligation

        iv. the rating (if any) contemplated to be attributed to the principal repayment of the funding obligation

        v. details respecting any redemption rights, including the nature and conditions applicable to any exercise and OPG's expected basis for determining whether or not to exercise a redemption right, option or privilege;

    b. details respecting interest obligations, such as:

        i. the anticipated interest or discount rate or rates (including default rates)

        ii. the timing/frequency/conditions of coupon payments

   iii. any required deposits to be made into a finance reserve account or supplemental account

   iv. the availability of any funding rebates in order to provide for payment of interest

   v. the rating (if any) contemplated to be attributed to the interest obligation;

c. details respecting any hedging obligation (e.g., interest or FX swaps, options or other derivatives), such as:

   i. the name of the counterparty and credit details

   ii. the credit ratings (if any) of the payor(s)

   iii. the risks sought to be mitigated by the derivative

   iv. anticipated circumstances (if any) in which the derivative may not achieve such mitigation or be subject to early termination

   v. whether collateral posting requirements will apply;

d. details respecting other funding obligations, such as:

   i. the payee

   ii. the timing and any conditions of payments

   iii. any required deposits to be made into a finance reserve account or supplemental account or the availability of any funding rebates in order to provide for payment of such obligations

   iv. in the case of a contingent obligation (e.g., indemnities), the nature and extent of any contingency affecting the payment obligation, the circumstances in which a payment obligation may arise and any specified maximum claim amount

e. assuming that the Province would be liable for capital, reserve or supplementary account deposit obligations (see question 6, above), details respecting the schedule for such deposits and the conditions for the application of such amounts to pay such amounts and the related priorities for application.

18. OPG (and presumably OPG's accountants) is contemplating that the Province will be provided transaction documentation "in substantially final form" and that the Province will not be entitled to provide input "other than in its capacity as obligor under the [CLPA]". In other words, assuming that the CLPA is signed in advance, the Province will have no real opportunity to comment on the forms of transaction documents to be used, and will

have a limited opportunity to "not accept" [1] the documentation. Can the Province live with these limitations?

19. The proposed OPG certificate (pre-incurrence) would include an attestation by OPG regarding the use of pre-reviewed documentation. The test for conformity of the to-be-used documentation, compared to the pre-reviewed documentation, would focus only on whether "the covenants of the Financing Entity are no more onerous in any material respect" and that the "events of default" are consistent "in all material respects". Is the limited scope of this conformity test acceptable, or should it be broadened and cover specific items such as:

    a. no differences in the timing of or circumstances under which payments are or may become due (for example, as a result of any termination, wind-up, liquidation or realization)

    b. no differences that could affect the Province's rights of subrogation or interests as a subrogee

    c. with respect to the anticipated form of series specific documents (as opposed to the upfront terms of program-wide "master" documents), confirming that the variable terms set forth in the proposed documents are as reasonably contemplated in the reviewed forms, having regard to such matters as:

        i. the type of instrument to be issued (i.e., debt (bullet vs. amortizing), equity-linked, pass-through instruments, etc.)

        ii. the scope of the related obligations (e.g., redemption or extension features or other optionality)

        iii. the extent of the related obligations (e.g., limited recourse features, limitations on indemnities, etc.)

        iv. the timing, conditions and circumstances in which payment obligations may arise,

    but making it clear that conformity would not include a comparison to the particular financial terms, rates, levels and parameters of the obligations other than if the reviewed forms specify specific requirements, limitations or parameters.

20. How much time is sufficient for the Province:

    a. to do an initial review of the main transaction documentation (including forms of series-specific documents), which would set the acceptable pattern for future issuances? The proposal is 15 BDs, although that does not seem to make sense

[1] Note that the proposed OPG language is not crystal clear that the Province can reject the reviewed documentation, which we expect is merely drafting, but that will need to be confirmed assuming the Province wishes to work within the OPG/Tory mark-up.

given that OPG proposes that the Province must confirm acceptance of the terms within 15 BDs of receipt of the documentation

b. to do a review of any changes to the main transaction documentation (including forms of series-specific documents), which would reset the acceptable pattern for future issuances? The proposal is to receive proposed amendments at least 15 BDs prior to first use, and the Province would confirm acceptance of the terms within 15 BDs of receipt of the documentation

c. to review applicable details of a proposed funding obligation in advance of an incurrence (proposal is 10BDs)?

21. What other items should be incorporated into the timeline from the Province's perspective?

E. Information, Reporting and Other Covenants

22. OPG proposes to provide the Province with an applicable "Financing Plan" only after an incurrence. Does the Province need to see this document as it is issued and changed, rather than only after the time of an incurrence?

23. OPG proposes to provide the Province with any actual offering/disclosure documents only after it is used. Does the Province need to have input into offering/disclosure document before use or dissemination (e.g., the description of the CLPA)?

24. OPG has limited its negative covenant on elections by the Financing Entity following a Protection Event to actions that would accelerate obligations. Should this be broader to cover extensions or other consensual changes that could affect the obligations (e.g., creditor concessions).

F. Parties

25. Will it be sufficient for the CLPA (and any procedural side-letter) to be signed by OPG, acting solely in its capacity as "financial services manager" (i.e., with OPG's liability being limited by the terms of the related management or administrative agreement)? How does this interplay with any other indemnities or exculpatory provisions that the Province is anticipating for OPG (corporate) and its officers?

26. Who from OPG should sign the officer's certificate? The OPG proposal is 2 "executive officers".

27. OPG proposes that a failure to comply with the PAM or "approval process" will not result in any breach. Assuming that OPG is in fact proposing that its failure would have no consequences, including as between the Province and OPG whatsoever, are the process aspects of the OPG proposal even meaningful to the Province?