OPG – April 5, 2017
Meeting with DM Serge Imbrogno

Fair Hydro Trust – Unresolved Issues List

1. A Financing Entity (FE) will not be required to purchase a Regulatory Asset from IESO unless it is able to finance the purchase.

Commented [A1]: This is the purpose. If role of OPG Trust is changed (directional vs. financing) then nature of arrangement and requirements would change.

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.

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 Province will indemnify and hold the creditors of the FE harmless against all loss.

Commented [A2]: Contingent liab

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).

Commented [A3]: ?? first 5 years increases limited to inflation. Limits on 10% of total bill and 10% increase – to be reviewed

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 (added: intangible) 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.

Commented [A4]: Reporting by FE should be addressed – to OPG for oversight – audited f/s.

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.

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.

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 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.

Commented [A5]: Do we allow for OFA to step in if need be? How will FC risk be managed?

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.

Commented [A6]: This would be usurping the role of the OEB w.r.t. rates --- other factors are also considered w.r.t. rates.

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.

Commented [A7]: yes

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 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.

Commented [A8]: a true up mechanism was discussed? Provisions for customers considering leaving the grid, etc.

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).

Commented [A9]: the OEB would expect such. The IESO would need to ensure proper controls to this effect in subsequent collection efforts through LDCs.

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 dissolution of the FE (in which case the indemnity in paragraph 3 would apply).