

FW: Change of Law Protection Agreement - Fair Hydro

From: Ken Kandeepan <ken.kandeepan@ofina.on.ca>
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Date: Thu, 16 Nov 2017 14:16:40 -0500

The compromise option for the amendments issues. If Tory's/Osler are ok, there's a meeting of minds on both agreements. Fingers crossed.

Thanks

Ken k

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, November 16, 2017 2:01 PM
To: Mansoori, Nina <nmansoori@torys.com>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Change of Law Protection Agreement - Fair Hydro

Hi Nina,

Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
 - Section 4.02 will remain unchanged in relation to incurrences
 - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture will specifically designate the Protection Provider as a Specified Creditor.
3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of any proposed amendments to the Trust Indenture or any of the Program Agreements.
 - This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.

Feel free to call if a discussion on this would be useful.

Stephen R. Ashbourne

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From: Mansoori, Nina [<mailto:nmansoori@torys.com>]
Sent: Thursday, November 16, 2017 1:36 PM
To: ASHBOURNE, STEPHEN
Cc: LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
Subject: Change of Law Protection Agreement - Fair Hydro

Steve,

Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this point from the Province's perspective?

Thanks,
Nina

Nina Mansoori

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