

FW: UPDATED - Fair Hydro -- Change of Law Agreements

From: Ken Kandeepan <ken.kandeepan@ofina.on.ca>
To: "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>, "Donaldson, Mark (TBS)" <mark.donaldson@ontario.ca>
Cc: John Psinas <john.psinas@ofina.on.ca>
Date: Mon, 27 Nov 2017 12:49:33 -0500
Attachments: -CLPA - Process Agreement(November 22_17).pdf (343.21 kB); Blackline_ProtectionAgreement.pdf (406.69 kB); CLPA - Protection Agreement.docx (77.22 kB); -CLPA - Process Agreement(November 22_17).docx (66.58 kB)

Hi Cindy and Mark

The latest versions from Tory's and Osler's

Thanks

Ken k

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Sunday, November 26, 2017 11:47 AM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: FW: UPDATED - Fair Hydro -- Change of Law Agreements

Hi all,

Please see my email to the provincial legal group after my preliminary review of the mark-ups. There do seem to be a number of points to discuss and I'm sure that Blakes will be able to better identify others. Perhaps an internal provincial call sometime on Monday could be arranged.

Thanks.

Malle

From: Hanslep, Malle (MOF)
Sent: November-26-17 11:41 AM
To: ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com); VINER, JON (JON.VINER@blakes.com); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (ENERGY); PRESTAGE, JA (JA.PRESTAGE@blakes.com)
Subject: FW: UPDATED - Fair Hydro -- Change of Law Agreements

Hi all,

I have reviewed the agreements and think there are quite a few issues to discuss as a result of the mark-up. I wonder if it would work best to have a provincial legal call on Monday morning to go over the revised drafts and then have a call with our clients at the OFA and Energy afterwards? Below are some of the issues I have identified on a preliminary basis for discussion. There may be additional issues and perhaps some of these points can be worked through with more detail review.

Protection Agreement

- 2.01 (a)(iv)(B) – does revised wording work – would be good to work through this wording.
- 2.08 – change to wording re continuance of guarantee

- 4.01 – they have added back ability of Province to specifically agree that a particular Approved Obligation is covered – wonder why? And it should be in writing – not sure what our original wording on this point was
- 4.02 (b) – they have changed reference to content of certificate to Indenture Trustee (on behalf of bondholders, etc, other parties secured under trust indenture) to confirm that all certifications required by the Province have been provided instead of OPG confirming that all of its obligations to Province and internal requirements and processes in connection with adherence of Limited Guarantee have been done. This is linked to another major change they have proposed to the Process Agreement – looks like they are reducing OPG's obligations to provide certificates to the Province to mirror those that OPG is providing to the Indenture Trustee. This is a significant point and reduces OPG's obligations under the Process Agreement quite a bit and was not discussed at last Tuesday's meeting.
- 4.02(c) – Why delete in respect of which Adherence Conditions have been satisfied – not sure that concept is picked up elsewhere.
- 6.01 – Assumption is changed to case by case which means the right has to be built into the proposed warehouse and term loan documents now if it is to be available. They also deleted OPG's obligation to make efforts to include this in funding obligations in general from the Process Agreement.
- 6.05 – If the Province did assume on a case by case, then doesn't Province get rights to collateral or atleast part?
- 7.03 – What reps does the Indenture Trustee give in the Master Trust Indenture and Supplementals? If Trustee gives them there, why not here? Perhaps we should require them to get a legal opinion.
- 8.01 – Have not reviewed against previous wording but it looks like the suspension right is being reduced because it is limited to incurrence o amendment of Primary Obligations rather than breach of the Process Agreement more generally.
- 9.01 - Do the comments about the Termination notice make sense?
- Defined Term Approved Obligation Amount, Certified Primary Obligations, and others – needs to be reviewed

Process Agreement

- Have moved delivery of initial financing plan and forecast amount and Province's failure to object to recitals for timing reasons – agree that there are timing logistics that need to be worked out, but the ability of Provincial representatives to take such actions flows from Ministers power to provide the guarantee – Province needs to develop the best way to deal with these timing issues that works with our authorities and rewrite these provisions. This also applies to "Reference Documents" concept.
- 3.01 – OPG has revised so it will only provide a certificate to Province if it is required to provide a certificate under Protection Agreement to Trustee – This is a significant change that Province needs to consider. The reason that we agreed to provide a certificate in more limited circumstances to Indenture Trustee (on behalf of beneficiaries) was to assist dealers on "certainty" issues. The same principle does not apply to the Province and OPG relationship which is a separate process.
- 3.02 – Not sure what OPG is proposing here.
- 6.05 – delete obligation on OPG to cause Financing Entity to use commercially reasonable efforts to include assignment provisions in funding obligations – why?
- 7.01 – deleted suspension right in process agreement on basis that it is now in protection agreement but it is more limited.

Please let me know what time would work for you on Monday morning. I am going to pass on this email to OFA staff as well so they get a preliminary sense of the mark-up.

Thanks.

Malle

From: Mansoori, Nina [<mailto:nmansoori@torys.com>]

Sent: November-24-17 2:04 PM

To: 'ASHBOURNE, STEPHEN'; 'JON.VINER@blakes.com'; 'JA.PRESTAGE@blakes.com'

Cc: Kandeepan, Ken (OFA); LADAK Lubna -TREASURY; Strathy, Anna (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Donaldson, Mark (TBS); Cayley, Daniel (ENERGY); Thouin, Alena (ENERGY); Ramchandani, Rima; LEE John -TREASURY; RYFA Ken -TREASURY; 'HAHN PARKER Janet -TREASURY'; MAUTI John -FIN & C CTRL; LAURETA LAPIRA May -TREASURY; Feldman, Michael; WONG Leslie -LAWDIV; 'Sebastiano, Rocco'; Milligan, Peter; Fullerton, Rick; Mayman, Gadi (OFA); Manning, Mike (OFA);

Hanslep, Malle (MOF); 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; Maciel, Andrew; Adalja, Sunil; Persad, Nicole; Persaud, Donnie - Debt Capital Markets; Hume, Steen (ENERGY); Mansoori, Nina
Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements

Blakes team,

Please find attached consolidated comments from the dealers and OPG (and their counsels) on the draft documents circulated below. These changes are drafting changes and clean up changes that reflect our discussions from earlier this week where we addressed all the open business points. Where we changed a concept or revised the drafting, we provided an explanation in the footnote to assist in your review.

The one substantive point we think requires further discussion is on the assumption mechanics; we understand that the Province is no longer seeking an exchange right. Once you have digested these new drafts, we'd like to schedule a lawyers call early next week to finalize them.

Best Regards,
Nina

Nina Mansoori

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From: ASHBOURNE, STEPHEN [<mailto:STEPHEN.ASHBOURNE@blakes.com>]

Sent: November-21-17 5:17 PM

To: Ramchandani, Rima <rramchandani@torys.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; MAUTI John -FIN & C CTRL <john.mauti@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; Mansoori, Nina <nmansoori@torys.com>; Feldman, Michael <mfeldman@torys.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Persad, Nicole <Nicole.Persad@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>

Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca) <Daniel.Cayley@ontario.ca>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>

Subject: RE: UPDATED - Fair Hydro -- Change of Law Agreements

Hi Rima. Here are my mark-ups of the agreements Torys circulated yesterday afternoon. These versions have not been reviewed by the Province, but are being circulated to this group to facilitate a discussion shortly at your office. They are/remain subject to Province input, etc. We propose to gather at your office at 5:45, if that makes sense to you. Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

-----Original Appointment-----

From: bwood@torys.com [mailto:bwood@torys.com] **On Behalf Of** Ramchandani, Rima
Sent: Tuesday, November 21, 2017 3:43 PM
To: Ramchandani, Rima; LEE John -TREASURY; RYFA Ken -TREASURY; 'HAHN PARKER Janet - TREASURY'; MAUTI John -FIN & C CTRL; LAURETA LAPIRA May -TREASURY; Mansoori, Nina; Feldman, Michael; WONG Leslie -LAWDIV; 'Sebastiano, Rocco'; Milligan, Peter; Fullerton, Rick; Mayman, Gadi (OFA); Manning, Mike (OFA); Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; Maciel, Andrew; Adalja, Sunil; Persad, Nicole; Persaud, Donnie - Debt Capital Markets
Cc: Ken Kandeepan; LADAK Lubna -TREASURY; Anna Strathy; Veinot, Cindy (TBS); McKinlay, Tom (MAG); Donaldson, Mark (TBS)
Subject: UPDATED - Fair Hydro -- Change of Law Agreements
When: Tuesday, November 21, 2017 5:00 PM-9:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Torys - 79 Wellington 33rd Floor

For those unable to participate in person, here's the dial-in:

Dial-in: 1-800-600-0998
Access Code: 8657666#

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