Fees for Financial Services Manager

From: "Calwell, Carolyn (ENERGY/MEDEI/MRI)" <carolyn.calwell@ontario.ca>
To: "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>
Cc: "Hume, Steen (ENERGY)" <steen.hume@ontario.ca>, "Cox, Hilary (ENERGY)" <hilary.cox@ontario.ca>, "Nelms, Scott (MOF)" <scott.nelms@ontario.ca>, "Katona, Keley (ENERGY)" <som1.keley.katona@ontario.ca>, "McKinlay, Tom (ENERGY)" <tom.mckinlay@ontario.ca>
Date: Mon, 28 Aug 2017 11:41:06 -0400
Attachments: Fees Rider 28 August 2017.docx (23.53 kB)

Cindy – the Ontario Fair Hydro Plan Act allows OPG as Financial Services Manager to charge such fees as may be prescribed by regulation, subject to approval by the Ontario Energy Board. We had started drafting the regulation in June, but hit an impasse with OPG and so paused this work. We are now trying to advance it again.

I have attached the latest draft of the regulation. It affords OEB discretion to do a prudence review of fixed costs and to challenge any of the assumptions, benchmarks and methodology used by OPG as part of the variable fee.

OPG will say (and said in earlier discussions) that the OEB can have no discretion over the fee or its accounting treatment will be jeopardized. OPG relied on these statements from the white paper:

> 4. Province cannot have the right to be able to veto OPG's decisions about the relevant activities of the Trust. OPG must have the power over the relevant activities of the Trust and be compensated. The relevant activities of the Trust include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
>
> 10. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:
>
> a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks.
> b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
> c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
> d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
> e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

We are looking to be able to have a real conversation about the accounting risks of this proposal. Would you please take a look at the draft and let us know your thoughts.
Happy to discuss.

Carolyn

Carolyn Calwell
Legal Director
MAG Civil Law Division
Ministries of Energy / Economic Development & Growth /
Research, Innovation & Science / Infrastructure / Accessibility
416-212-8392

This communication may be solicitor/client privileged and contain confidential information only intended for the person(s) to whom it is addressed. Any dissemination or use of this information by others than the intended recipient(s) is prohibited. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.