Financing plan

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Hi – as a we talked about it, this was my thinking about how the financing plan might work.

I refer to the Governance Agreement that the Province has with Hydro One. The purpose of this agreement is to establish the role of the Province "as an investor and not as a manager" and it squarely articulates the roles and responsibilities of the board of directors, with the intent that the Province does not wade into the board's territory. The agreement limits the Province's ability to nominate directors to the board to 40% of the number of directors to be elected, regardless of the Province's ownership interest. The remaining 60% of the directors are nominated by a Nominating and Governance Committee of the Board. The Province is required to vote in favour of the directors nominated by the Committee except that it may withhold from voting in favour of any nominee only if it withholds from voting in favour of all nominees (with the exception of the CEO and in the Province's discretion, the Chair). The Province has advance notification requirements of taking this action. There is then a process for replacing the board.

Applying this, I would mark up Article 9 as follows and we could supplement what we put in the legislation with a governance-like agreement with OPG Trust.

Article 9 – The Financing Plan

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate Minister may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

The plan should be provided to the Minister – see s. 11(1) of James' and Dan's draft. I would replace "propose to the Minister" with "provide to the Minister" (for information, not approval).

(2) Terms and Conditions of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) OEB Approval – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB. ***[NTD: see section 25 of the Electricity Act: The Financial Services Agent shall, at least 60 days before the beginning***

of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees that it proposes to charge during the fiscal year to the Board for review.]

(4) OEB Review – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) Replacement of the Administrative Agent – If the OEB Minister determines that the Financing Plan is not consistent with the Fair Allocation Plan, the Administrative Agent Financial Services Agent shall take reasonable measures to make the Financing Plan consistent with the Fair Allocation Plan prior to incurring a Funding Obligation. Remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to make the Financing Plan consistent with the Fair Allocation Plan, reflect such recommendations in relation to such further actions, the Delegate Minister may by written declaration remove the Financial Services Agent and designate one or more other persons who shall thereafter become the Financial Services Agent (a Replacement Financial Services Agent).'

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