NPP Notes on FAP discussion

From: "Petsche, Nadine (TBS)" <nadine.petsche@ontario.ca>
To: "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>
Cc: "Hosick, Sarah (TBS)" <sarah.hosick@ontario.ca>
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Cindy – below are my notes from yesterday's meeting. I will complete my review of the doc now and flag any major issues. In terms of what I hear yesterday, OPG's feedback on the FP needs to be reviewed to see if there are any major flaws. The role of the OEB seems to be an active topic (finally), but it seems clear that there will be NO involvement with the FP, and only a review of the admin costs of the Trust. Yesterday's discussion was very productive, with all parties participating openly and raising concerns and relevant points that need to be addressed in short turn. I've highlighted a few items in red below for your attention (level of detail in docs, wording that may indicate control and/or be problematic for the market, etc.)
Would like to hear more from KPMG, but Kim is dealing with them directly.
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Morning discussion:

OPG Management reviewed the decision to involve OPG through a Trust mechanism and important considreations to enable OPG to consolidate the trust (not taking direction from IESO or MOE (as an agent of the province)

OPG noted that it will be important to demonstrate the risk of variability of returns to consolidate the Trust (RISK exists that not yet satisfied)
OPG noted that AG's review of the accounting as well (both from perspective of control by OPG as well as potential control by the Province)
OPG advised that they would have a list of outstanding issues ready for sharing by the end of the day.

Blakes (SO) advised that need to know 'fatal flaws' only, taking into account E&Y feedback, and noted that need to avoid unfettered delegation of the right to tax. From a dealer's perspective, Blakes advised that if the legislation works, there are no losses to the investors (and have to make sure that don't undo the accounting side)

John Li (OPG) advised that current draft still appears hat OPG is acitng more like an agent but recognized that it was a balancing act.
John Mauti also referenced PSAB and need to consider those rules which adds another layer of complexity.

Some discussion of contingencies and need for an OFA guarantee, or for OFA to step in where there is a market disruption (to provide debt):
- NPP asked advisors to document the contingencies from a provincial perspective
- Also spoke with Tim (MOE) about the need to have OFA participate in the discussions (I think that they are assuming that Scott Nelms is keeping OFA advised)

Blakes advised that they see a need for several contracts in the future (?), perhaps referring to addendums as circumstances change?

FAP is supposed to be more principled than authoritative (under the legislation), and the Regs would describe in more details. Some question about the language in the doc (Sch 3 – for establishing the Financing Plan) as being reflective of "control". OPCD suggested changes to wording from "shall" to "is expected to". Blakes explained that the components of Sched. 3 are intended to reflect accountabilities that the public might expect to be in place (standard?), but others argued that they may be too prescriptive. Dealers argued that Schedule 3 has to be less detailed and more flexible. OPG is to review and provide comments.

Question outstanding on who would be developing the FAP. Leaning that it should not be MOE, and that the IESO might be more appropriate. With regards to ;potential changes to the FAP in the future, need to use caution on who has 'rights' to make changes or it can indicate 'control' by the province (i.e. where there is a change in government).

Questions on the role of the OEB remain outstanding. It was acknowledged (by OEB and the IESO) that the current IESO process works well, and that there isn't a need for a lot of OEB involvement to achieve a regulatory asset. The OEB advised on the use of Accounting Orders as normal practice.

Ownership of Regulatory Assets – discussed preference that RA could only be owned by financing entities, and that the Leg might help in addressing potential liquidity issues by allowing the RA to be sold to others(?).
Reference made to a 'collective action agreement' which would address the situation where the IESO may have to 'warehouse' debt for a period of time (<1year)

Dealers commented on cash flows – seemed to be pushing for daily billings 'like in the US', suggesting that there may be cash flow issues if the billing only occurs on a monthly basis.
Some discussion on how the lenders where going to recover their debt (directly through ratepayers, or through LDCs) – Note: Separate comments by OEB indicate that direct recoverable from ratepayers is not necessary or desirable. (*this issue may be better understood and being addressed*)
Discussed nature of shortfalls to lenders i) allocations mis-calculated based on expected # customers/usage → addressed through true-ups so OK; ii) LDC goes bankrupt or refuses to pay amount collected (LDC will be on hook for whole amount billed by IESO, regardless of whether ratepayers remit, and IESO expected to act as a service agent to continue to try to collect $ on lender's behalf). From an investors' perspective, would want to know about their rights to recover as other debt of LDCs would be backed by assets. If risk considered too high, may need daily remittances).

Frequency of RRP true-up: only required 1x per year under legislation, but OEB is doing it every 6 months (helps to deal with short term liquidity).
Investors might want to see a separate line on the LDC bills indicating the amount billed for the Transition charge (on invoices from IESO), and that ratepayer bills indicate that a portion of their bill related to the Fair Hydro Plan even if the amount is not disclosed separately.

Break out groups (Accounting)

1. Creation of a regulatory asset - clarified that the only 'regulatory' asset is the one purchased from the IESO.
   - right to recover the 'delta' w.r.t. generation costs seems to be accepted as the same as existing right, but in the future and growing.
   - Question on why anything additional might be needed from the OEB than what had been required in the past for RPP (which is legislatively recoverable by the IESO – accounting standards and history w.r.t. RRA on CFS noted.) OEB likely to issue an accounting order (for the portion of the RA deferred by the IESO only).

   NPP – Assume that OPG has what they need in terms of comfort on recoverability of the financing costs and admin costs through the FAP and FP to meet the needs of lenders and achieve optimal rates, and to recover the 'intangible' from an IFRS and US GAAP perspective.
   - o Requested copy of OPG's feedback on yesterday's documentation from MOE, and copy of sensitivity analysis from OPG

2. Recoverability of financing costs-
   - Through the FAP, not to be subject to any review or involvement of OEB (NPP – like a debt retirement charge, but DRC was reported on Province's books, not books of a GBE reporting under US GAAP/IFRS).
   - Right to recover appears to be legislative only , without any involvement of the OEB.

3. Financing Plan
   - Role of OEB in OPG Trust Admin costs – TBD – may review the business plan, may NOT approve
   - *OPG had drafted a FP with an at risk component (needed for accounting), which was sent to MOE*
   - *Additional comments on draft added by John L, John M and JJ and given to Tory's. Includes a 'performance element' where the Province can fire OPG if they do not meet (NPP - does this indicate control?) John Lee doesn't think that the proposed wording would position the province as an 'agent'.*
   - *The financial services agent agreement will help OPG meet the accounting test.*
   - *Reference to 'make whole' clause that OPG is pushing back with dealers.*
   - *OPG's preference is to have a 'formulaic' approach to calc the fair price to recover (NPP – risk of control? Suggested wording referencing 'expected that it would consider xxx)*
   - *Government CANNOT unilaterally change the FP, for FAP.*