RE: Call re Delivery of Reference Documentation to Province

From: "ASHBOURNE, STEPHEN" <stephen.ashbourne@blakes.com>

To: "Kandeepan, Ken (OFA)" <ken.kandeepan@ofina.on.ca>, "Thouin, Alena (ENERGY)" <alena.thouin@ontario.ca>, "Whitfield, Tobias P. (MOF)" <tobias.whitfield@ontario.ca>, "Manning, Mike (OFA)" <mike.manning@ofina.on.ca>, "Hanslep, Malle (MOF)" <malle.hanslep@ontario.ca>, "Strathy, Anna (OFA)" <anna.strathy@ofina.on.ca>, "Kwan, Ronald (OFA)" <ronald.kwan@ofina.on.ca>, "Christie, Tim (ENERGY)" <tim.christie@ontario.ca>, "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>, "Donaldson, Mark (TBS)" <mark.donaldson@ontario.ca>

Cc: "Sawwaf, Khareem (ENERGY)" <khareem.sawwaf@ontario.ca>, "Huang, Jackson (MEDG/MRIS)" <jackson.huang@ontario.ca>, "Cayley, Daniel (ENERGY)" <daniel.cayley@ontario.ca>, "Lightbody, Ava (ENERGY)" <ava.lightbody@ontario.ca>, "Rehob, James (ENERGY)" <james.rehob@ontario.ca>, "VINER, JON" <jon.viner@blakes.com>

Date: Tue, 09 Jan 2018 17:13:38 -0500

Attachments: 12928399-v1-Fair Hydro Trust - Investor Presentation (pdf mark-up).pdf (3.11 MB); 12928361-v2-Fair Hydro Trust - Investor Presentation.DOCX (585.03 kB)

Hi. We have added our comments to the Investor Presentation, attached. Apologies – this document does not seem to permit normal blacklining, so it will be difficult for you to pinpoint all of the suggested changes. In several places, we highlighted/CAPs items for your consideration and confirmation – which should be easily identified in the document even without blacklining. For the time being. please let us know if you have thoughts on those items. In the meantime, we will see what can be done to identify the other drafting changes in the presentation. Thanks, Steve

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

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com | Twitter | Unsubscribe

From: ASHBOURNE, STEPHEN
Sent: Tuesday, January 09, 2018 9:26 AM
To: 'Ken Kandeepan'; 'Thouin, Alena (ENERGY)'; 'Tobias P. Whitfield (MOF)'; 'Mike Manning'; 'Malle

Hanslep (MOF)'; 'Anna Strathy'; 'Ronald Kwan'; 'Tim Christie (ENERGY)'; 'Veinot, Cindy (TBS)'; 'Mark Donaldson (MOF)'
Cc: 'Sawwaf, Khareem (ENERGY)'; 'Huang, Jackson (MEDG/MRIS)'; 'Daniel Cayley (ENERGY)'; 'Lightbody, Ava (ENERGY)'; 'James Rehob (ENERGY)'; VINER, JON
Subject: RE: Call re Delivery of Reference Documentation to Province

Hi. Here is a list of items that could be discussed at 9:30, in order to settle on the scope and nature of commenting on the OM:

<u>MOE – Alignment Considerations</u>

1. Simplified references to the OFHPA (general caveat)
2. Scope of descriptions (generally, should be …subject to the OFHPA and the Regulations)
3. "purposes" of the OFHPA (e.g., implies that is rate reduction)
4. Nature and duration of the "moratorium period" (non-legislative)
5. Trust vs. "financing entity" (permit multiple FEs and co-ownership arrangements – minimally described)
6. "Fair Allocation Amount" – amount vs. effect of calculation (imprecise); concept of "Readjustments" missing
7. Financing Plan – refinements (e.g., references to Refinancings)
8. Expectations re FAA – negative until 2024
9. "Ontario's Fair Allocation Plan" – styling
10. OPG appointment as FSM (initial only – ability for Minister to replace)
11. Inclusions into IESO deferrals (precision)
12. Carrying costs vs funding rebates (impact on nature of Investment Asset)???
13. No reference to pre-OFHPA adjustments (piggy bank)
14. Risk Factors – approach to describing legal risks and Protection Agreement as mitigation
15. Technical definitions and descriptions (e.g., carrying costs; forecasts from IESO rather than forecast information; invoicing mechanics; simplifications of definitions; etc.)
16. Limited discussion re contents of "Financing Plan"
17. No real recognition of tail risk and duration mismatch considerations and mitigants/strategies
18. No discussion re OFHPA rights of action, etc.
19. "non-bypassable" (meaning)

<u>OFA - Change of Law Protection Agreement</u>

1. Narrative (e.g., "in favour of the Issuer")
2. Notes do not constitute debt of Province, etc. (confirm description) – additional considerations?

3. Scope of “Approved Obligations” (overbroad)

4. Positive obligations in favour of Province (e.g., apply amounts; credit for applied amounts)

5. Definition of “Protection Events” (align)

6. Rights of Subrogation (needs to be more detailed)

7. Mechanics of Protection Account

8. Limited direct rights of Noteholders (through indenture trustee)

9. Limitations on damages

10. Only passing reference to the “Process Agreement” in OM (but referred to in more detail in the Investor Presentation)

Other

1. Confidentiality (deemed vs. confirmed in writing)

2. Liability for Taxes (priority claim in waterfall; impact on triggers)

3. IESO - descriptions

4. Electricity Market; OEB; OPG

5. Platform (e.g., very broad cross default – beyond generic risk factors?)

6. Interplay between Warehouse and Term issuances

7. Description of 2018 Notes

8. Optional Redemption of Notes (confirm if applicable/acceptable)

FYI, attached is our internal (preliminary) mark-up of the OM. It should not be on-circulated at this stage. We are providing it now in case you would find it useful to have specified illustrations of the foregoing items.

Regards, Steve

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