

RE: Fair Hydro -- Change of Law Assumption Agreement

From: "Hanslep, Malle (MOF)" <malle.hanslep@ontario.ca>
To: "Ramchandani, Rima" <rramchandani@torys.com>
Cc: "Mansoori, Nina" <nmansoori@torys.com>, "Whitfield, Tobias P. (MOF)" <tobias.whitfield@ontario.ca>, LEE John -TREASURY <john.s.lee@opg.com>, RYFA Ken -TREASURY <ken.ryfa@opg.com>, WONG Leslie -LAWDIV <leslie.wong@opg.com>, "Feldman, Michael" <mfeldman@torys.com>, "Olusoga, Yinka" <yolusoga@torys.com>, "Donaldson, Mark (TBS)" <mark.donaldson@ontario.ca>, "Manning, Mike (OFA)" <mike.manning@ofina.on.ca>, "Mayman, Gadi (OFA)" <gadi.mayman@ofina.on.ca>, "Kwan, Ronald (OFA)" <ronald.kwan@ofina.on.ca>, "Kandeepan, Ken (OFA)" <ken.kandeepan@ofina.on.ca>, "Nelms, Scott (MOF)" <scott.nelms@ontario.ca>, "Devine, James (OFA)" <james.devine@ofina.on.ca>, "Yep, Carlos (OFA)" <carlos.yep@ofina.on.ca>, "Strathy, Anna (OFA)" <anna.strathy@ofina.on.ca>, "Cengarle, John (MOF)" <john.cengarle@ontario.ca>, "Katona, Keley (MOF)" <keley.katona@ontario.ca>, "He, Gavin (OFA)" <gavin.he@ofina.on.ca>, "Hirani, Anis (OFA)" <anis.hirani@ofina.on.ca>, "Kim, John (OFA)" <john.kim@ofina.on.ca>, "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>, "Thouin, Alena (ENERGY)" <alena.thouin@ontario.ca>, "McKinlay, Tom (MAG)" <tom.mckinlay@ontario.ca>, stephen.ashbourne@blakes.com, LADAK Lubna -TREASURY <lubna.ladak@opg.com>, "Emes, Aaron" <aemes@torys.com>, "Hill, Krista" <khill@torys.com>
Date: Tue, 24 Oct 2017 11:06:38 -0400

Thanks Rima. Would you please also circulate to Tom McKinlay in addition to the others noted below.

Malle

-----Original Message-----

From: Ramchandani, Rima [mailto:rramchandani@torys.com]

Sent: October 23, 2017 7:32 PM

To: Hanslep, Malle (MOF)

Cc: Mansoori, Nina; Whitfield, Tobias P. (MOF); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com; LADAK Lubna -TREASURY; Emes, Aaron; Hill, Krista

Subject: Re: Fair Hydro -- Change of Law Assumption Agreement

Hi Malle, we have asked Osler to accelerate circulation of the draft supplemental indenture for the long term debt — we hope to have that by mid-week and will send it you on receipt. As with the supp for the short term debt, the draft will not have been reviewed by Torys or OPG but in the interests of time, we will circulate it to you concurrently. We will also start including you on any circulations of revised drafts of the other agreements. Unless we hear differently, we will include you, Toby, Alena and Steve.

Regarding timing, we understand that the short term facility would close very soon after the long term issuance (from a workload perspective, we are treating them as closing almost concurrently). Closing of the long term debt is targeted for the first week of December and closing of the short term debt is targeted for the second week of December. Marketing of the long-term debt would occur in late November but only once we have concluded the rating agency process. The dealers have advised us that the rating agencies will be interested in understanding the change of law agreement in particular, which is why we have been focused on having that agreement circulated and substantially settled with

the dealers and their counsel as soon as possible.

Please feel free to reach out if you would like to discuss live.

Thanks,
Rima

Sent from my iPhone

On Oct 22, 2017, at 9:43 AM, Hanslep, Malle (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>> wrote:

Hi Nina,

We do think that it is important for the wording of the protection agreement to appropriately encompass the financing and various instruments that are to be guaranteed by the Province should one of the events as set out in the term sheet occur. The Province has not determined whether the approach suggested to separate the two documents is appropriate. If it is the proposed long term financing that is planned to be done by year-end and there is a desire to substantially settle the terms of the Protection Agreement by the early November, I don't understand why a draft of the long term financing supplemental indenture would not be available for review yet.

When is it expected that the warehousing facility would be put in place?

Thanks.

Malle

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679 -----Original Message-----

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

Sent: October 21, 2017 11:28 PM

To: Whitfield, Tobias P. (MOF)

Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thanks for your email. Based on the term sheet, since the Province isn't guaranteeing the obligations under these agreements but only stepping in if there is a change of law "protection event", we did not expect the drafting of the Change of Law Protection Agreement would be implicated by these other agreements (particularly now that we have proposed dealing with the Province's approval of the various program agreements in a separate procedures document). We also understand that in order to be in a position to close on a financing before year end, the Change of Law Protection Agreement needs to be substantially settled by early November. If that is still the case, then we expect the dealers and their counsel will need to see a draft in this coming week.

In the interest of time, we have attached an initial draft of the supplemental indenture for the warehouse facility which, as noted previously, has not yet been reviewed by OPG and Torys. The supplemental for the long term financing will be a simpler document - with mechanics for issuing the notes and pricing information but likely no additional covenants and events of default and no drawdown mechanics like the warehouse facility.

We will start copying the Province and Blakes on circulations of all documents going forward. Please let us know if the entire team on this email should be copied or only Blakes and the Provincial legal team.

Best Regards,
Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP

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-----Original Message-----

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]

Sent: October-21-17 8:53 AM

To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>

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Subject: Re: Fair Hydro -- Change of Law Assumption Agreement

Nina,

We are working on a draft of the Change of Law Protection Agreement, but cannot complete the drafting until we have seen a draft of the Supplemental Indenture and the other instruments that are to be guaranteed.

We are also working on drafting some responses and comments to your comments from Wednesday on the approval process document, and will get back to you with those soon.

Best

Toby

Tobias Whitfield
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From: Mansoori, Nina
Sent: Friday, October 20, 2017 10:23 AM
To: Whitfield, Tobias P. (MOF)
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Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
From: Mansoori, Nina
Sent: October-18-17 9:53 AM
To: 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
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Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best
Toby

Tobias Whitfield
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From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 6, 2017 5:58 PM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>'; 'LADAK Lubna -TREASURY'
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

Accounting Issues:

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

- that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence
- that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
- the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)
- the negative pledge with respect to the exercise of certain options on the debt
- the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants

have reviewed the proposal.

Practical Issues:

- * The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- * In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

- * Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- * We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- * There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- * We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

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Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best
Toby

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Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael;
Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,
Rima

Rima Ramchandani

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Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

- (i) the constating documents of such Financing Entity;
- (ii) the management agreement between the Financing Entity and OPG;
- (iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
- (iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
- (v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
- (vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
- (vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
- (viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the

Financing Plan in the next two years (a "Two Year Forecast"). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor's approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

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