From: Kelly Listoe
To: John Kim
Subject: FW: EXTERNAL - OPG Amendment
Date: Thursday, July 06, 2017 2:34:23 PM
Attachments: OEFC- OPG Credit Agreement- Amendment No. 3 (Draft).docx
OPG form of borrowing notice amend 3 feb 2017.docx

Hi John;

We have been working on an amendment to OPG's $700MM facility and OPG has just asked to have the new financing entity set up in connection with the fair hydro plan act excluded from being defined as a subsidiary (see below) – and have suggested wording, which I am ok with. Before proceeding (sending to OFA legal for review, then back to OPG), I'd like to have confirmation that you are ok with this.

Regards,

Kelly Listoe
Documentation & Compliance Coordinator
Capital Markets
Ontario Financing Authority
1 Dundas Street West, Ste. 1400
Toronto, ON. M7A 1Y7
(416) 325 - 8129

From: RYFA Ken -TREASURY [mailto:ken.ryfa@opg.com]
Sent: Wednesday, June 28, 2017 10:49 AM
To: Kelly Listoe <Kelly.Listoe@ofina.on.ca>
Cc: MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; TETI Vicki -FIN & C CTRL <vicki.teti@opg.com>; YAO Anthea -FUNDMGMT <anthea.yao@opg.com>
Subject: RE: EXTERNAL - OPG Amendment

Kelly,
Attached is an updated amendment. A few changes made as follows:
3rd "Whereas" principal amount updated to $300 million as we just borrowed an additional $100 million in June
4th "Whereas" "principal" changed to "commitment"
New item 4 to clarify the definition of "subsidiary" to exclude any financing entity related to the Ontario Fair Hydro Plan Act. This is a significant item that needs to be captured. OFA has been involved in the developments related to this Act. A similar change may also be needed for all existing notes but that is a separate issue.
Signing page separated from the rest of the document. Bottom of page before signing page has note about remainder of page deleted. You may have different wording.

No comments on the Schedule.

It may be more efficient to deal directly with Tyler on any language changes but just keep me involved.

Thanks,
Ken

From: Kelly Listoe [mailto:Kelly.Listoe@ofina.on.ca]
Sent: Wednesday, June 21, 2017 10:29 AM
To: RYFA Ken -TREASURY
Subject: RE: EXTERNAL - OPG Amendment

Ok. I'll touch base with Linda.

Regards,

Kelly Listoe
Documentation & Compliance Coordinator
Capital Markets
Ontario Financing Authority
1 Dundas Street West, Ste. 1400
Toronto, ON. M7A 1Y7
(416) 325 - 8129

From: RYFA Ken -TREASURY [mailto:ken.ryfa@opg.com]
Sent: Wednesday, June 21, 2017 9:52 AM
To: Kelly Listoe <Kelly.Listoe@ofina.on.ca>
Subject: RE: EXTERNAL - OPG Amendment

Kelly,
Thanks for the nudge. I followed up with our legal – waiting to hear back. Since I haven't seen the words that Linda has proposed it would be helpful to see them to get our legal groups comments rather than waiting another cycle.
Thanks,
Ken

From: Kelly Listoe [mailto:Kelly.Listoe@ofina.on.ca]
Sent: Wednesday, June 21, 2017 9:21 AM
To: RYFA Ken -TREASURY
Subject: RE: EXTERNAL - OPG Amendment

Hi Ken:

I'm just following up on the status of this. Also, Linda Smith has some additional wording regarding changing the rate calculation that will need to be included. I was thinking of doing this once I get your legal's comments on the amendment, then I'll forward everything to our legal.

Regards,

Kelly Listoe
Documentation & Compliance Coordinator
Capital Markets
Ontario Financing Authority
1 Dundas Street West, Ste. 1400
Toronto, ON.   M7A 1Y7
(416) 325 - 8129

From: RYFA Ken -TREASURY [mailto:ken.ryfa@opg.com]
Sent: Tuesday, May 30, 2017 4:24 PM
To: Kelly Listoe <Kelly.Listoe@ofina.on.ca>
Subject: RE: EXTERNAL - OPG Amendment

Kelly,
We have the required approval. Now I just need to get comments from our legal staff. Hopefully should be getting this within the next few days. I will let you know.
Thanks,
Ken

From: Kelly Listoe [mailto:Kelly.Listoe@ofina.on.ca]
Sent: Wednesday, May 24, 2017 11:03 AM
To: RYFA Ken -TREASURY
Subject: FW: EXTERNAL - OPG Amendment

Hi Ken:

I'm touching base to see if you have any update to this.

Thanks,

Kelly Listoe
Documentation & Compliance Coordinator
Capital Markets
Ontario Financing Authority
1 Dundas Street West, Ste. 1400
Toronto, ON.   M7A 1Y7
(416) 325 - 8129

From: Kelly Listoe
Sent: Thursday, February 23, 2017 9:46 AM
To: 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>
Cc: Linda Smith <Linda.Smith@ofina.on.ca>
Subject: RE: EXTERNAL - OPG Amendment

Hi Ken

Attached are the Amendment #3 and corresponding Borrowing Notice. Even though the board meeting isn't until May, I am sending them to you to take a look at as they have already been prepared.

Regards,

Kelly Listoe
Documentation & Compliance Coordinator
Capital Markets
Ontario Financing Authority
1 Dundas Street West, Ste. 1400
Toronto, ON. M7A 1Y7
(416) 325 - 8090

From: RYFA Ken -TREASURY [mailto:ken.ryfa@opg.com]
Sent: Friday, February 17, 2017 2:36 PM
To: Kelly Listoe <Kelly.Listoe@ofina.on.ca>
Subject: RE: EXTERNAL - OPG Amendment

Kelly,
At this time the amendment won't be going to the board until May.

Curious as to why you need new incumbency certificates? You would have incumbency certificates for both signatories – K. Hartwick and J. Lee. I can understand the requirement if we have new signatories. Please advise.
Thanks,
Ken

From: Kelly Listoe [mailto:Kelly.Listoe@ofina.on.ca]
Sent: Thursday, February 16, 2017 9:41 AM
To: RYFA Ken -TREASURY
Subject: EXTERNAL – OPG Amendment

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Hi Ken

I've redrafted the amendment I sent to you in early December to increase the amount, extend the maturity, etc. I'm writing to ask when your board meets/ when you expect the resolution to be done and to remind you that the OEFC will need new incumbency certs. for the signatories as well.

Regards,

Kelly Listoe
Documentation & Compliance Coordinator
Capital Markets
Ontario Financing Authority
1 Dundas Street West, Ste. 1400
Toronto, ON.   M7A 1Y7
(416) 325 - 8090

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AMENDING AGREEMENT NO. 3

This Amending Agreement made as of the •th day of June, 2017.

BETWEEN: **ONTARIO POWER GENERATION INC.**
(“OPG”)
As Borrower

AND: **ONTARIO ELECTRICITY FINANCIAL CORPORATION**
(“OEFC”)
As Lender

WHEREAS OPG and OEFC entered into a Credit Facility Agreement dated June 17, 2016, as amended by Amending Agreement No. 1 dated September 7, 2016, and Amending Agreement No. 2 dated February 2, 2017 (the “Agreement”), providing for OPG to borrow from OEFC a principal amount of up to Seven Hundred Million Dollars;

AND WHEREAS the Agreement provides that advances under the Agreement only occur during the period starting on January 1, 2017 and ending on December 31, 2017;

AND WHEREAS as of the date hereof, the total principal amount outstanding under the Agreement is $300,000,000.00;

AND WHEREAS OPG and OEFC have now agreed to increase the total commitment amount under the Agreement to an amount of up to Two Billion Three Hundred Fifty Million Dollars, with no more than One Billion Five Hundred Million Dollars to be advanced prior to January 1, 2018;

AND WHEREAS OPG and OEFC now agree to amend the Agreement so that advances under the Agreement may occur during the period starting on January 1, 2017 and ending on December 31, 2018.

THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions hereinafter set out, the parties agree that:

1. The definition of the term “**Commitment**” in Section 1.1 of the Agreement is deleted and replaced with the following :

   “Commitment” means, at any time, an amount equal to the principal amount of Two Billion Three Hundred Fifty Million Dollars;

2. The definition of the term "**General Corporate Requirements**" in Section 1.1 of the Agreement is deleted and replaced with the following:

"General Corporate Requirements" means OPG's general corporate requirements for the period from January 1, 2017 to December 31, 2018, comprised of the Darlington Requirements and the Other General Corporate Requirements;

3. The definition of the term "**Other General Corporate Requirements**" in Section 1.1 of the Agreement is deleted and replaced with the following:

"Other General Corporate Requirements" means OPG's general corporate requirements for the period from January 1, 2017 to December 31, 2018, other than the Darlington Requirements;

4. The definition of the term "**Subsidiary**" in Section 1.1 of the Agreement is deleted and replaced with the following:

"Subsidiary" means:

(a) a corporation with more than 50% of the voting power or the outstanding Voting Shares of which is owned, directly or indirectly, by OPG or by one or more other Subsidiaries or by OPG and one or more other Subsidiaries,

(b) any Person (other than a corporation) in which OPG, or one or more other Subsidiaries, directly or indirectly, has at least a major ownership and power to direct the policies, management and affairs thereof,

(c) notwithstanding sub-sections (a) and (b) above, any Person that is a "financing entity" as defined in the *Ontario Fair Hydro Plan Act, 2017* (Ontario) is deemed not to be a Subsidiary.

5. Section 3.1 of the Agreement "**Advances**" is deleted and replaced with the following:

"OEFC agrees, on the terms and conditions of this Agreement, to make Advances to OPG under the Credit Facility from time to time on any Business Day after January 1, 2017 and prior to January 1, 2019. OPG shall not request Advances more than twelve (12) times per calendar year without first obtaining the prior written consent of OEFC. OPG may request at the same time Advances for the Darlington Requirements and for the Other General Corporate Requirements. It is anticipated that OPG will request these Advances approximately monthly throughout a calendar year. The total of all Advances made prior to January 1, 2018 shall not be more than One Billion Five Hundred Million Dollars.

The Repayment Date of each Proposed Advance to be made in 2017 shall be such that the Repayment Date is no more than 30 years after the date of the Proposed Advance for 2017.

The Repayment Date of each Proposed Advance to be made in 2018 shall be such that the Repayment Date is a) no more than 30 years after the date of the Proposed Advance for no more than 50% of the total amount of such Proposed Advances for 2018, and b) no more than 10 years after the date of the Proposed Advance for the remaining amount of the Proposed Advances for 2018. This requirement may only be modified with the written consent of OEFC.

For greater certainty, no Advances shall be made under this Agreement after December 31, 2018."

6. Section 3.2 of the Agreement is deleted and replaced with the following:

"OPG shall provide OEFC with written notice requesting an Advance at least 10 Business Days prior to the date of the Advance. Each such notice (a **"Borrowing Notice**") shall be substantially in the form of Schedule 1 and shall specify, with respect to each Proposed Advance: (a) the date of the Advance (the **"Advance Date**"); (b) the principal amount of the Advance; (c) the purpose of the Advance, that is, whether it is for Darlington Requirements or Other General Corporate Requirements; (d) the Repayment Date of the Advance; and (e) the Interest Payment Dates. The interest rate that shall apply to such Advance shall be set in accordance with the procedure set forth in Section 3.4."

7. Schedule 1 of the Agreement (Form of Borrowing Notice) is deleted and replaced with the Form of Borrowing Notice attached hereto as Schedule 1.

[REMAINDER OF THE PAGE INTENTIONALLY DELETED]

IN ALL OTHER RESPECTS, the said Agreement is confirmed by the parties as further amended by the terms of this Amending Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the date first written above.

ONTARIO ELECTRICITY FINANCIAL CORPORATION

By: ______________________________

Name: Michael D. Manning
Title: Chief Operating Officer

I have the authority to bind the corporation.

ONTARIO POWER GENERATION INC.

By: ______________________________

Name: Ken Hartwick
Title: Chief Financial Officer and Senior Vice President Finance

I have the authority to bind the corporation.

By: ______________________________

Name: John Lee
Title: Vice President, Treasurer

I have the authority to bind the corporation.

SCHEDULE 1
FORM OF BORROWING NOTICE

Date:

Ontario Electricity Financial Corporation **("OEFC")**
c/o Ontario Financing Authority
1 Dundas Street West, Suite 1400
Toronto, Ontario
M7A1Y7

Attention: Cash Management
Via e-mail*: CashP@ofina.on.ca

Dear Sirs:

The undersigned, Ontario Power Generation Inc. ("OPG"), refer to the General Corporate Requirements Credit Facility Agreement dated June 17, 2016 (as amended, supplemented or restated from time to time, the **"Agreement"**, the terms defined therein being used herein as therein defined) between OPG and OEFC, and gives you notice pursuant to Section 3.2 of the Agreement that OPG requests the following Advances under the Agreement (each a **"Proposed Advance"**), and, in that connection, sets forth below the information relating to such Proposed Advances as required by Section 3.2 of the Agreement:

Proposed Advance – term up to 30 years:

(a) The date of the Proposed Advance, being a Business Day is ●
(b) The principal amount of the Proposed Advance is $●
(c) The purpose of the Proposed Advance is **[Darlington Requirements or, Other General Corporate Requirements]**
(d) The Repayment Date of the Proposed Advance is **[insert repayment date i.e. a date not more than 30 years after the date of the Proposed Advance]**
(e) The Interest Payment Dates are **[insert semi-annual interest payment dates].**

Proposed Advance – term up to 10 years:

(a) The date of the Proposed Advance, being a Business Day is ●
(b) The principal amount of the Proposed Advance is $●
(c) The purpose of the Proposed Advance is **[Darlington Requirements or, Other General Corporate Requirements]**

(d) The Repayment Date of the Proposed Advance **is [insert repayment date i.e. a date not more than 10 years after the date of the Proposed Advance]**

(e) The Interest Payment Dates are **[insert semi-annual interest payment dates].**

OPG hereby certifies that:

The representations and warranties of OPG contained in the Agreement are true and correct as at the date hereof.

[NTD: For use in 2018 only] [The Repayment Date of any of the Proposed Advance(s) for 2018 is (a) no more than 30 years after the date of such Proposed Advance for no more than 50% of the total of all Proposed Advances for 2018 and (b) no more than 10 years after the date of the Proposed Advance for the remaining amount of the Proposed Advances for 2018.]

No Event of Default has occurred or is continuing and no event or condition has occurred, which, with the lapse of time or the giving of notice or both would constitute an Event of Default.

OPG has complied or is complying with all terms, covenants and conditions contained in the Agreement.

Any and all funds received previously as Advances under the Agreement have been expended or are being held solely for the purpose for which they were advanced; no part of said funds has been nor any part of the funds to be received pursuant to this Notice shall be used for any other purpose.

Yours truly,

ONTARIO POWER GENERATION INC.

Per: ____________________
Authorized Signature

*To be confirmed by telephone call to OEFC Cash Management (416) 325-8108

From:	Gavin He
To:	John Kim; Bruno Amara; Shajee Kathirgamanathan
Subject:	OFHP Performance Fee Question
Date:	Saturday, October 28, 2017 7:08:12 PM
Attachments:	reg2017.0512.e04 with drafting instrns for leg counsel v4_EFB_v3.docx

Hi all,

Following our discussion of the Fair Hydro Plan performance fee, I went through the attached Fees reg. and my understanding is that the Financial Services Manager from the Financing Entity charges the performance fees (base fee and variable fee). Below is an excerpt from the reg from page 6:

- **Until a new proposed base fee is approved, the FSM may continue to charge the most current Board-approved base fee (if any).**

- **Once the new proposed base fee is approved by the Board, the FSM shall make a "retrospective" adjustment to the base fee (in the month following the month in which the approval is given). The adjustment will be the difference (positive or negative) between the base fee actually charged in the relevant period up to that point, and the new base fee approved by the Board for that period. In other words, the Board approved fee would be "retrospectively" applied to the whole period. By "period" I mean either the initial period from Nov1/17 – Dec31/18 or any calendar year starting with 2019. Note that any amendment to fees (under s. 9.1) would only apply prospectively starting in the month following the month in which the amendments were approved by the Board.]**

The regulation is saved under below folder as well:
S:\Users\CEF\Hydro 2017\Fair Hydro Plan (Post Announcement)\Implementation\OFHP_GA - Performance Fee

Let me know what your thoughts are?

Thanks,
Gavin He

CONFIDENTIAL
Until filed with the
Registrar of Regulations

REG2017.0512.e
4-TP

ONTARIO REGULATION

made under the

ONTARIO FAIR HYDRO PLAN ACT, 2017

FEES

Definitions

1. (1) In this Regulation,

"average monthly funding obligation" means, in respect of a month, the amount determined in accordance with subsection (2);

"average annual funding obligation" means, in respect of a year, the sum of the average monthly funding obligations for the year;

"market comparable fees" means fees, expressed as a yearly percentage rate, charged by asset managers [or management and financial service providers] in Canada or another jurisdiction specified by the Board for services that are similar to the services provided by the Financial Services Manager under the Act in terms of,

[NTD for leg counsel: I am trying to get more clarity around "management and financial service providers". I am not sure whether the intent is to say "management service providers or financial service providers". If the intent is to refer to a "management and financial service provider", I will try to ascertain whether this is a well-understood industry "term of art" (since based on a brief search it did not appear to be).]

(a) the type of services provided, being services in respect of funds including securitization vehicles, pension funds, other structured investment funds, hedge funds and other similar structured funds,

(b) the scope of the services provided,

Commented [OFA1]: OFA is of the view that there should be no mention of references to securitization vehicles, active managed funds and/or hedge funds or any investments of that sort be included in the regulation. The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

Commented [DS2]: NTD for OEB: Is "specified by" the right way to say this?

Commented [DS3]: NTD for ESP/MoF: Should there be a "temporal" connection too? E.g. "… services that are similar to, and provided at a time that is similar to the time the services are provided by, the FSM …".

(c) the level of the services provided, and

(d) the dollar amount of assets under management;

“funding tranche” means an ~~specific~~ issuance of ~~debt by a financing entity and constitutes all or part of a~~ funding obligations of a particular series, class or type that have the same terms;

“FSM services” means services provided by the Financial Services Manager to financing entities in relation to the management and administration of the financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by the financing entities;

“market comparable forecast interest rates” means, in relation to a potential funding tranche described in the submissions mentioned in subsection 6 (3) or 6 (4), interest rates charged by lenders in Canada **[at the time the submissions are made]** for a debt obligation that,

(a) has a principal amount that is comparable to the principal amount of the funding tranche,

(b) has a term that is comparable to the term of the funding tranche **[in terms of length and commencement]**,

(c) is based on a type of instrument that is comparable to the type of instrument of the funding tranche,

(d) has payment rights that are similar to the payment rights of the funding tranche, and

(e) is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche;

Commented [DS4]: NTD for OPG/MoF: Should this contemplate “posted” rates rather than rates “charged by”?

“net annual funding obligation” means, in respect of a year, the sum of the principal amounts of funding tranches issued in the year, other than any funding tranches that constitute a refinancing;

(2) For the purposes of determining the average monthly funding obligation for a month, the following formula applies:

$$(A + B) / 2$$

Where,

A = the sum of the balances on the first day of the month of the principal amount of all outstanding funding obligations incurred by financing entities,

B = the sum of the balances on the last day of the month of the principal amount of all outstanding funding obligations incurred by financing entities.

Forecast interest rate

1.1 For the purposes of this Regulation, the Financial Services Manager shall determine the forecast interest rate for a funding tranche that forms part of the net annual funding obligation for a year, by taking into account the following factors:

1. The interest rate for debt of or guaranteed by the Government of Ontario with a term or duration that is comparable to the term or duration of the funding tranche.

[NTD for leg counsel: We are confirming whether we need to refer to both "term" and "duration" here and in 2 ii below (and if yes, how these terms mean different things).]

2. The estimated credit spread, relative to the interest rate described in paragraph 1, for a debt obligation that,

   i. has a principal amount that is comparable to the principal amount of the funding tranche,

   ii. has a term that is comparable to the term of the funding tranche **[in terms of length and commencement]**,

   iii. is based on a type of instrument that is comparable to the type of instrument of the funding tranche, ~~and~~

   iv. has payment rights that are similar to the payment rights of the funding tranche, and

   v. is issued by an issuer with a risk profile comparable to the risk profile of the financing entity issuing the funding tranche.

3. Anticipated fees and commissions expected to be payable in connection with the issuance of the funding tranche.

Fees that may be established, charged

2. (1) For the purposes of subsection 19 (3) of the Act, the fees established and charged by the Financial Services Manager may be charged to financing entities ~~in relation to the management and administration of financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by~~for FSM services provided to the financing entities.

(2) A fee mentioned in subsection (1) shall be comprised of a base fee calculated under section [3] and a variable fee calculated under section [6].

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Commented [DS5]: NTD for OPG/MoF: Even if the term is the same length, would the commencement date of the term not also be relevant?

Commented [DS6]: NTD for OPG: Energy Policy is asking whether the fees and commissions are relevant to the determination of the forecast interest rate for the tranche, given that they are recoverable by the FSM under s. 7(2) below.

(3) For the purposes of subsection 19 (3) of the Act, fees may be established and charged by the Financial Services Manager to financing entities for the recovery of costs and expenditures, as provided for in section [7].

(4) The Financial Services Manager shall not establish or charge any fees to financing entities other than those fees provided for under this Regulation.

Base fee

3. (1) Subject to sections [5.1] and [5.2], the Financial Services Manager shall establish the proposed base fee for a month as follows:

1. Determine the amount that is 0.075 per cent of the average monthly funding obligation for the preceding month.

2. Divide the amount determined under paragraph 1 by 12.

(2) The first month in respect of which the base fee may be established is ~~July~~ November 2017.

[OLC Note: Just need to confirm -- will there be an average monthly funding obligation for the month of June 2017? If not, it would not be possible to apply this method in respect of July 2017.] **[NTD for leg counsel: The first funding obligation may not be incurred until around November 2017. The base fee for a month would be zero if there was no average monthly funding obligation for the preceding month (i.e. if it was zero).]**

(3) The Financial Services Manager shall submit to the Board the base fee proposed to be charged in respect of the period from November 1, 2017 to December 31, 2018 no later than October 31, 2017.

(4) The Financial Services Manager shall submit to the Board the base fee proposed to be charged in respect of any year after 2018 no later than 120 days before the start of the year in respect of which the base fee would be charged.

[NTD for leg counsel: Let's move the submission provisions (other than the amendment submission provision) from section 9 to the respective sections that deal with the fee in question. As you will see in s. 6 and 7 below, the submission process will be different for each of the types of fees (base, variable, and costs/expenditures).]

[Further NTD for leg counsel: The Board's review of the base fee for the period from July 1, 2017 to December 31, 2018 will be limited to ensuring that the base fee is calculated correctly (i.e. calculated in accordance with ss. 5 (3)).]

Commented [DS7]: NTD for OPG/OEB: The policy instruction is to provide that costs and expenditures are recoverable so long as they relate to the matters described in s. 7.1(1), and that the Board review the costs and expenditures from that perspective.

In order to implement this instruction and give the Board the authority to review, we have to deem the costs and expenditures to be fees.

Commented [OFA8]: To start – may need to be clarified

Commented [OFA9]: 7.5bps for 2017 and 2018 to be reviewed by the OEB for future years? This subsection says the OEB to review for the initial proposed base fee also.

Commented [DS10]: NTD for OPG/OEB: Ss. 19(4) of the OFHPA requires the Board to approve fees.

Board review of base fee

5.1 (1) The Board shall refuse to approve the proposed base fee mentioned in subsection 5 (3) if the Board is of the view that the proposed base fee was not established in accordance with subsection 3 (1).

(2) If the Board refuses to approve the proposed base fee,

(a) the Board shall provide reasons for the refusal; and

(b) the Financial Services Manager shall submit to the Board a revised proposed base fee that is established in accordance with subsection 3 (1)

[NTD for leg counsel: If the Board does not refuse to approve a proposed base fee under ss. (1) or (3), then we should explicitly say that the Board will approve the proposed base fee. Please tweak ss. 5.1 (1) and (3) accordingly.]

(3) The Board may refuse to approve a proposed base fee mentioned in subsection 5 (4) if the Board is of the view that the proposed base fee is materially inconsistent with market comparable fees.
[OLC Note: Should this section only apply starting January 1, 2019?]
[OLC Note: Are you sure that this is the only reason why the Board can refuse the proposed base fee?]
[NTD for leg counsel: In response to your notes, for the proposed base fee applicable in 2019 and beyond, the only basis upon with the Board can withhold approval is inconsistency with market comparable fees. For the proposed base fee applicable July 1 – Dec31/17 and Jan1 – Dec31/18, the Board can only withhold approval if the base fee is inconsistent with the formula in s. 3(1).]

Commented [DS11]: Explanatory note for OEB: The reg-making powers in s. 19 of the OFHPA don't appear to provide the same ability to impose on the Board (by reg.) the base fee as with the OESP reg-making powers in ss. 79.2(6) of the OEBA.

(~~1.1~~4) If the Board refuses to approve the proposed base fee,

(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding the determination of a base fee that is consistent with market comparable fees; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed base fee that takes into consideration the recommendations of the Board, if any**;** and

(ii) a description of the methodology that the Financial Services Manager has applied to determine the revised proposed base fee, including details concerning the market comparable fees that the Financial Services Manager considered.

(5) **[NTD for leg counsel: Please add a provision that says that the process (i.e. the process outlined in ss. (1) and (2) above, or (3) and (4) above) will be repeated until the Board approves a proposed base fee for the year in question, unless you are of the view that that is already clearly implicit in those provisions.]**

(6) **[NTD for leg counsel: Please add a provision that says that:**

- **Until a new proposed base fee is approved, the FSM may continue to charge the most current Board-approved base fee (if any).**

- **Once the new proposed base fee is approved by the Board, the FSM shall make a "retrospective" adjustment to the base fee (in the month following the month in which the approval is given). The adjustment will be the difference (positive or negative) between the base fee actually charged in the relevant period up to that point, and the new base fee approved by the Board for that period. In other words, the Board approved fee would be "retrospectively" applied to the whole period. By "period" I mean either the initial period from Nov1/17 – Dec31/18 or any calendar year starting with 2019. Note that any amendment to fees (under s. 9.1) would only apply prospectively starting in the month following the month in which the amendments were approved by the Board.]**

Variable fee

6. (1) Subject to subsection (2) and section 6.1, the Financial Services Manager shall establish the variable fee for a year after 2017 as follows:

1. Apply the following formula in respect of each funding tranche that forms part of the net annual funding obligation for the year:

$$(A \times (B - C)) \times 0.05$$

Where,

A = the principal amount of the funding tranche,

B = the forecast interest rate for the funding tranche, and

C = the actual interest rate for the funding tranche.

2. Calculate the sum of the amounts determined by applying the formula under paragraph 1.

(2) If the circumstances set out in Column 1 of the following Table apply in a year, the variable fee payable for a year is subject to the rules set out opposite those circumstances in Column 2 of the Table:

~~Item~~	~~Column 1 Circumstances~~	~~Column 2 Rules~~
~~1.~~	~~The average annual funding obligations are $10 billion or less.~~	The variable fee payable for the year shall not be more than 1 per cent of the amount that is 5 per cent of the net annual funding obligation for the year. The variable fee payable for the year shall not be less than -1per cent of the amount that is 5 per cent of the net annual funding obligation.
~~2.~~	~~The average annual funding obligations are greater than $10 billion.~~	~~The variable fee payable for the year shall not be more than 2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.~~ ~~The variable fee payable for the year shall not be less than -2 per cent of the amount that is 5 per cent of the net annual funding obligation for the year.~~

(3) The Financial Services Manager shall make submissions to the Board in respect of the **[variable fee proposed to be charged in 2018, including the]** forecast interest rates for the funding tranches anticipated to be issued in 2018, no later than **[October 31, 2017]**.

(4) The Financial Services Manager shall make submissions to the Board in respect of the variable fee proposed to be charged in any year after 2018, including the forecast interest rates for the funding tranches anticipated to be issued in the year, no later than 120 days before the beginning of the year.

(5) If the Financial Services Manager has not submitted a forecast interest rate under subsection (3) or (4) for a funding tranche that will be issued in a year after 2017, the Board may require the Financial Services Manager to submit a proposed forecast interest rate for the funding tranche **[and may specify the time by which the submission must be made]**, or the Board may determine the funding tranche taking into consideration the forecast interest rates submitted by the Financial Services Manager for the year under subsection (3) or (4).

Board review of variable fee

6.1 (1) The Board may refuse to approve a proposed variable fee if the Board is of the view that any forecast interest rate used for the purposes of subsection 6 (1) is inconsistent with ~~[~~market comparable forecast interest rates~~]~~.
[OLC Note: We provide an explanation for how to determine "market comparable fees" but we say nothing about how to determine "market comparable forecast interest rates". Please instruct.]
[NTD for leg counsel: We have created a new defined term "market comparable forecast interest rates" to address this.]
[OLC Note: Are you sure this is the only reason why the Board may refuse the proposed variable fee?] **[NTD for leg counsel: Yes.]**

(2) If the Board refuses to approve the proposed variable fee,

Commented [OFA12]: Delete references to the table and column 1 and column 2, consistent with the comment below.

Commented [OFA13]: In our previous correspondence, dated September 27, 2017 from Ken Kandeepan to Scott Nelms, we suggested deletion of column 1 and item 2.

Commented [DS14]: NTD for OPG/OEB: Is this wording appropriate?

Commented [DS15]: NTD for OPG: The policy instruction is to not require the Board to apply linear interpolation to come up with a forecast interest rate, because the approach would be too prescriptive for this fairly limited subset of total fees.

Commented [OFA16]: Same comment as above. OFA is of the view that there should be no mention of references to securitization vehicles, active managed funds and/or hedge funds or any investments of that sort be included in the regulation. The financing entity has a very different structure and operates differently from securitization vehicles, hedge funds etc., so such market comparable fees/rates referencing such investment types would not be good representation of the benchmark in this situation.

(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding each forecast interest rate that the Board found was inconsistent with ~~[~~market comparable forecast interest rates~~]~~; and

(b) the Financial Services Manager shall submit to the Board,

(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and

(ii) a description of the methodology that the Financial Services Manager has applied to determine revised forecast interest rates for each funding tranche in respect of which the Board found an inconsistency with ~~[~~market comparable forecast interest rates~~]~~.

~~Fees~~ Reimbursements for costs and expenditures

7. (1) The Financial Services Manager may establish and charge fees for the recovery from a financing entity of any costs and expenditures incurred by the Financial Services Manager,

(a) on behalf of the financing entity in connection with the Financial Services Manager's duties under the Act in relation to the financing entity; or

(b) under a management agreement between the Financial Services Manager and the financing entity, where the agreement provides for the reimbursement of the costs and expenditures.

(2) The costs and expenditures referred to in subsection (1) may include costs and expenditures in respect of the following:

1. Underwriters or selling agents for funding obligations.

2. Banking fees, including structuring fees or work fees.

3. Fees of issuing and paying agents for funding obligations.

4. Fees of trustees.

5. Fees incurred in the preparation of financial statements, financial reports, compliance certificates and tax returns.

6. Fees of legal counsel.

7. Rating agency fees.

8. Filing or registration fees.

9. Direct costs of the Financial Services Manager for employees who are dedicated to providing FSM services to financing entities.

~~(3) The costs and expenditures referred to in subsection (1) shall not include any overhead costs of the Financial Services Manager, including [….].~~
~~[OLC Note: The phrase "overhead costs" seems a bit vague. Examples would help.]~~

Board review of fees for costs, expenditures

7.1 (1) The Board may refuse to approve a proposed fee for costs and expenditures or a portion of a proposed fee for costs and expenditures if the Board is of the view that the proposed fee is in respect of costs and expenditures that were not incurred in relation to the management and administration of financing entities and the investment asset, including in relation to funding obligations incurred or that are planned to be incurred by the financing entities.

(2) If the Board refuses to approve the proposed fee or a portion of the proposed fee, the amount not approved shall not be payable to the Financial Services Manager and the associated costs and expenditures shall not be recoverable by the Financial Services Manager from the financing entity.

~~(a) the Board shall provide reasons for the refusal and may make recommendations to the Financial Services Manager regarding the proposed fee; and~~

~~(b) the Financial Services Manager shall submit to the Board,~~

~~(i) a revised proposed fee that takes into consideration the recommendations of the Board, if any, and~~

~~(ii) a description of how the proposed fee is in respect of costs and expenditures that were incurred in relation to the management and administration of financing entities and the investment asset.~~

Charging of fees

8. (1) Subject to sections [5.1], [6.1] and [7.1], in charging fees, the Financial Services Manager shall provide for,

(a) the base fee for a month to be payable within **[x]** days after the end of the month;

(b) the variable fee for a year to be payable in the following calendar year in twelve equal monthly instalments that coincide with the payment of the base fee for each month; and

(c) the fee for costs and expenditures for a month to be payable within [x] days after the end of the month.

Commented [DS17]: NTD: Need to specify when the base fee is payable.

Commented [DS18]: NTD: Need to specify when the fee for costs and expenditures is payable.

(2) If the variable fee for a year is a negative amount, it shall be deducted in twelve equal monthly instalments from the base fee payable in the following year.

(3) Where there is more than one financing entity, the portion of the fees allocated to and payable by a financing entity shall be based on its proportionate share of the average principal amount of funding obligations for the applicable period.

Commented [DS19]: NTD: Should this be based on the average of the opening and closing balances for the applicable period (e.g. year)?

(4) For the purposes of determining the average principal amount of funding obligations under subsection (3), the formula set out in subsection 1 (2) applies with necessary modifications.
[OLC Note: Please confirm that this works.]

Submissions to Board

9.1 ~~(1) The Financial Services Manager shall make submissions to the Board in respect of fees proposed to be charged in 2018 no later than October 31, 2017.~~

Formatted: section-e

~~(2) The Financial Services Manager shall make submissions to the Board in respect of fees proposed to be charged in respect of any year after 2018 no later than 120 days before the start of the year in respect of which the fees would be charged.~~

~~(3)~~ The Financial Services Manager may, no more frequently than once in any consecutive twelve month period, make submissions to the Board to amend any base fee or variable fee~~s~~ approved by the Board, and the provisions of section [5.1]. [6.1] or [7.1], as applicable, apply in respect of the submissions.

Board approval, general

10. (1) For the purpose of determining whether to approve a proposed fee, the Board shall consider the information provided by the Financial Service Manager in its submission relating to the proposed fee.

(2) For the purpose of determining whether to approve a proposed base fee or variable fee, the Board may consider, as it determines to be appropriate, the advice provided by third party consultants and experts. **[NTD for leg counsel: We want to retain this provision, but the Board noted that they already have this ability without needing to specifically include it here. The Board flagged the risk of an adverse interpretation in other contexts where the Board is not given explicit statutory authority to consider advice of third party consultants and experts. Can we word this ss. 10(2) in such a way that it is just "for greater clarity"?]**

Commencement

11. This Regulation comes into force on the day it is filed.

From:	Ken Kandeepan
To:	John Kim
Cc:	Carlos Yep; John Psinas; James Devine; Anna Strathy; Ronald Kwan
Subject:	RE: Summary of the OFHP
Date:	Friday, October 27, 2017 10:36:44 AM

Thanks John, for the FE to present earnings there has to be some sort of a revenue stream, not sure how that is possible in the first four years given the structure of the OFHP, much appreciated if you can share the details of the revenue mechanism as soon as it becomes available.

I am cc'ing Ron as well in case he can shed additional light.

Thanks

Ken k

From: John Kim
Sent: Friday, October 27, 2017 10:26 AM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Carlos Yep <Carlos.Yep@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: RE: Summary of the OFHP

Hi Ken,

I meant to come up to chat but got tied up preparing for the LMSo this morning.

The details are not yet clear to me but my understanding is that FE will continue to earn even in the first 4 yrs. The mechanism to do that is still under discussion and potentially will involve some sort of a deferral account. This was the reason for Energy's delay in providing us the numbers for the borrowing requirement last week.

Thanks,

John

From: Ken Kandeepan
Sent: Thursday, October 26, 2017 5:10 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Carlos Yep <Carlos.Yep@ofina.on.ca>; John Psinas <John.Psinas@ofina.on.ca>; James Devine <James.Devine@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Summary of the OFHP

Hi john

The way I understand the operations of the OFHP at least for the first 4 years is as follows:

IESO pays 100% to the generators and charges ratepayers approximately 83%, with the difference set up as a regulatory asset funded vi a credit facility of $2 billion form the Province. On a quarterly basis the regulatory asset will be purchased by the Financing Entity with debt issued to OPG (49%) and the capital markets (51%).

Over the first four years the Financing Entity has no revenue sources hence interest on this debt will be paid via additional borrowings issued in the same proportion. Once the CEA kicks in, it will be used to pay interest and draw down debt as appropriate.

Happy to discuss, I am relatively free in the AM tomorrow.

Thanks

Ken k

From: Gavin He
To: John Kim
Cc: Bruno Amara; Shajee Kathirgamanathan
Subject: Re: OFHP Performance Fee Question
Date: Sunday, October 29, 2017 12:35:43 PM

Hi John,

Here’s my understanding of the structure (which might have changed since I read the documents last time). The Financial Services Manager (OPG) will be providing FSM services to the financing entity (OPG Trust in this case), and will charge the financing entity for the services provided by FSM. So I believe the financing entity is paying FSM the base fee and variable fee. Sorry I just realized that in my email last night, I stated it incorrectly. I meant to say that FSM charges the fees from the financing entity. I think these costs should be tax deductible though.

To your question on the income tax, I recall that the Trust is 100% debt financing, although it will acquire the investment assets from IESO on a monthly basis, there’s no specific direction from the tax acts that how such investment assets should be treated for tax purposes, so we probably need some clarification on whether if there are any tax payable on that. Also, I think the Trust will raise the funding by issuing bonds/notes, so could there be income/losses arising from any interest spreads? If so, then that would the revenues for the financing entity right?

Those are my thoughts so far.

Regards,
Gavin He

On Oct 29, 2017, at 09:44, John Kim <John.Kim@ofina.on.ca> wrote:

> I saw it yesterday too. Does it mean FE make nothing? Was my thought
>
> Sent from my iPhone
>
> On Oct 28, 2017, at 7:08 PM, Gavin He <Gavin.He@ofina.on.ca> wrote:
>
>> Hi all,
>>
>> Following our discussion of the Fair Hydro Plan performance fee, I went through the attached Fees reg. and my understanding is that the Financial Services Manager from the Financing Entity charges the performance fees (base fee and variable fee). Below is an excerpt from the reg from page 6:
>>
>> <!--[if !supportLists]-->• <!--[endif]-->**Until a new proposed base fee is approved, the FSM may continue to charge the most current Board-approved base fee (if**

any).

<!--[if !supportLists]-->• <!--[endif]-->**Once the new proposed base fee is approved by the Board, the FSM shall make a “retrospective” adjustment to the base fee (in the month following the month in which the approval is given). The adjustment will be the difference (positive or negative) between the base fee actually charged in the relevant period up to that point, and the new base fee approved by the Board for that period. In other words, the Board approved fee would be “retrospectively” applied to the whole period. By “period” I mean either the initial period from Nov1/17 – Dec31/18 or any calendar year starting with 2019. Note that any amendment to fees (under s. 9.1) would only apply prospectively starting in the month following the month in which the amendments were approved by the Board.]**

The regulation is saved under below folder as well:
S:\Users\CEF\Hydro 2017\Fair Hydro Plan (Post Announcement)\Implementation\OFHP_GA - Performance Fee

Let me know what your thoughts are?

Thanks,
Gavin He

<reg2017.0512.e04 with drafting instrns for leg counsel v4_EFB_v3.docx>

From:	Ronald Kwan
To:	John Kim
Subject:	Re: Summary of the OFHP
Date:	Thursday, October 26, 2017 5:53:15 PM

Hi John,

Did you attend the 9:30 meeting this morning?

Ron

From: John Kim
Sent: October 26, 2017 5:37 PM
To: Ronald Kwan
Subject: Fwd: Summary of the OFHP

Hi Ron,

Not sure what this is about but sharing first.

John

Sent from my iPhone

Begin forwarded message:

> **From:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Date:** October 26, 2017 at 5:10:09 PM EDT
> **To:** John Kim <John.Kim@ofina.on.ca>
> **Cc:** Carlos Yep <Carlos.Yep@ofina.on.ca>, John Psinas <John.Psinas@ofina.on.ca>, James Devine <James.Devine@ofina.on.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>
> **Subject: Summary of the OFHP**
>
> Hi john
>
> The way I understand the operations of the OFHP at least for the first 4 years is as follows:

IESO pays 100% to the generators and charges ratepayers approximately 83%, with the difference set up as a regulatory asset funded vi a credit facility of $2 billion form the Province. On a quarterly basis the regulatory asset will be purchased by the Financing Entity with debt issued to OPG (49%) and the capital markets (51%).

Over the first four years the Financing Entity has no revenue sources hence interest on this debt will be paid via additional borrowings issued in the same proportion. Once the CEA kicks in, it will be used to pay interest and draw down debt as appropriate.

Happy to discuss, I am relatively free in the AM tomorrow.

Thanks

Ken k

From:	Ronald Kwan
To:	John Kim
Subject:	Re: Summary of the OFHP
Date:	Thursday, October 26, 2017 6:40:07 PM

Wasn't the tax discussion from the OFA side way off base?

And I think they were not always attuned to the policy side either.

From: John Kim
Sent: October 26, 2017 6:20 PM
To: Ronald Kwan
Subject: Re: Summary of the OFHP

I did partly and this is where it came from as OFA guys were saying there were no earnings while Steve was having a hard time. I told them let's leave #1 at that but to be discussed. I agreed with Steve. But I had to leave for the appointment

Sent from my iPhone

On Oct 26, 2017, at 5:53 PM, Ronald Kwan <Ronald.Kwan@ofina.on.ca> wrote:

> Hi John,
>
> Did you attend the 9:30 meeting this morning?
>
> Ron
>
> ---
>
> **From:** John Kim
> **Sent:** October 26, 2017 5:37 PM
> **To:** Ronald Kwan
> **Subject:** Fwd: Summary of the OFHP
>
> Hi Ron,
>
> Not sure what this is about but sharing first.
>
> John

Sent from my iPhone

Begin forwarded message:

From: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Date: October 26, 2017 at 5:10:09 PM EDT
To: John Kim <John.Kim@ofina.on.ca>
Cc: Carlos Yep <Carlos.Yep@ofina.on.ca>, John Psinas <John.Psinas@ofina.on.ca>, James Devine <James.Devine@ofina.on.ca>, Anna Strathy <Anna.Strathy@ofina.on.ca>
Subject: Summary of the OFHP

Hi john

The way I understand the operations of the OFHP at least for the first 4 years is as follows:

IESO pays 100% to the generators and charges ratepayers approximately 83%, with the difference set up as a regulatory asset funded vi a credit facility of $2 billion form the Province. On a quarterly basis the regulatory asset will be purchased by the Financing Entity with debt issued to OPG (49%) and the capital markets (51%).

Over the first four years the Financing Entity has no revenue sources hence interest on this debt will be paid via additional borrowings issued in the same proportion. Once the CEA kicks in, it will be used to pay interest and draw down debt as appropriate.

Happy to discuss, I am relatively free in the AM tomorrow.

Thanks

Ken k

From:	Ken Kandeepan
To:	John Kim
Cc:	Carlos Yep; John Psinas; James Devine; Anna Strathy
Subject:	Summary of the OFHP
Date:	Thursday, October 26, 2017 5:10:10 PM

Hi john

The way I understand the operations of the OFHP at least for the first 4 years is as follows:

IESO pays 100% to the generators and charges ratepayers approximately 83%, with the difference set up as a regulatory asset funded vi a credit facility of $2 billion form the Province. On a quarterly basis the regulatory asset will be purchased by the Financing Entity with debt issued to OPG (49%) and the capital markets (51%).

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Happy to discuss, I am relatively free in the AM tomorrow.

Thanks

Ken k