

IESO FAIR HYDRO PLAN CREDIT FACILITY MINISTER OF FINANCE LENDING DIRECTIVE

The Independent Electricity System Operator (IESO) has requested a revolving credit facility in an amount of up to \$2 billion from the Ontario Financing Authority (“OFA”) to support its role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* (“OFHP Act”). To accommodate this request, the OFA requires a Lending Directive from the Minister of Finance.

- The IESO is requesting the credit facility be in place by July 1, 2017, with an initial term of 5-years plus a contingency of three months (effectively expiring on September 30, 2022).

RECOMMENDATION

- OFA staff recommend the Minister sign the Lending Directive allowing the OFA to lend to the IESO.
 - This will help the IESO to fulfil the commitments under the OFHP Act as the IESO will have to finance short to medium term funding shortfalls in the implementation of the Fair Hydro Plan.

MINISTER’S DIRECTIVE

Minister of Finance’s Lending Directive would authorize the OFA to provide a revolving credit facility in an amount of up to \$2 billion with a maturity date of September 30, 2022. The Lending Directive will also include the following conditions:

- The interest rate charged to IESO on all advances will be based on the Province’s cost of funds plus a twenty-five basis point (0.25%) spread.
- The credit facility agreement shall be subject to such other terms as the OFA deems appropriate from time to time.

FISCAL IMPACT

- There would be a relatively small but positive fiscal impact for the Province as a result of this credit facility.
 - The Province receives a small fiscal benefit by adding 25 basis points (i.e., 0.25%) to the Province’s cost of borrowing for funds provided to the IESO under the facility.
- Both the IESO and OFA are consolidated with the Province on a line by line basis. For the OFA and the Province, costs associated with the credit facility are recovered from the IESO. For the IESO, principal and interest associated with the credit facility are recovered from electricity ratepayers.

DETAILS AND ANALYSIS

- On May 31, 2017, the government passed the OFHP Act to enable the implementation of the Ontario Fair Hydro Plan, which will lower electricity bills by 25 per cent on average for eligible residential customers. Eligible farms and small businesses will also receive benefits (essentially for those eligible for the Regulated Price Plan).
- Under the OFHP Act, the IESO will incur a monthly funding shortfall in the early years of the plan, as a portion of the Global Adjustment (“GA”) charge to ratepayers will be deferred to the future.
- During this period, GA amounts collected from ratepayers will, therefore, be insufficient to fund the IESO’s contractual obligations to electricity producers and service providers.

- The OFHP Act gives the IESO the right to recover those deferred amounts from specified consumers in the future (the “regulatory asset”) and the ability to sell the regulatory asset (i.e., the shortfall) to a financing entity.
 - It is anticipated that the regulatory asset will be purchased by the financing entity to be established by OPG (“OPG SPV”, an OPG special purpose vehicle or trust).
 - The cash received from selling the regulatory asset will be used by the IESO to fund the incurred GA shortfall.
- Although IESO will not need long-term borrowing for its role in this process, it is expected to need short-term financing to manage initial and ongoing IESO cash flow requirement timing differences.
 - The OPG SPV is not anticipated to be established and able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017 (planned for later in summer 2017; however, exact timing is subject to actual implementation).
 - Even once the SPV is set up to borrow, there is expected to be timing differences between the IESO’s monthly settlement process when it has to pay generators and when the SPV purchases the asset from IESO.
 - Also, under the legislation, OPG’s SPV is not required to purchase any portion of the regulatory asset.

Current Status

- An existing credit facility between the IESO and the OFA is currently available for \$975 million which includes support for the current Regulated Price Plan (RPP) program. The IESO has proposed that a separate and additional credit facility be provided to support only the FHP credit needs. A separate facility for the FHP is preferable to ensure operational efficiency and tracking of related interest costs.
- As a result, the IESO has proposed to reduce the current \$975 million credit facility by \$500 million and create a new FHP facility in the amount of \$2 billion.
 - The \$500 million reduction in the current OFA facility is to eliminate duplicate credit needs and reflect the replacement of the current RPP by the new FHP.
 - Specific terms of the agreement are being negotiated between the IESO and OFA.

	OFA: IESO Facility	New Proposed FHP Facility
Current Credit Facilities	\$975 million	\$ -
Reduction due to FHP	\$(500 million)	\$ -
Increase due to FHP	\$ -	\$2,000 million
Total Credit Facilities	\$475 million	\$2,000 million

BACKGROUND

- The IESO is a not-for-profit corporate entity established in 1998 by the *Electricity Act, 1998*. It is governed by an independent Board of Directors and its Chair and Directors are appointed by the Province.
- The IESO has full statute-based authority for establishing, monitoring and enforcing reliability standards in the province. All the companies that make up the power system in Ontario must meet the IESO's standards.
- Its fees and licences to operate are set by the Ontario Energy Board and it operates independently of all other participants in the electricity market.

Electricity Finance Branch / Corporate and Electricity Finance Division
Ontario Financing Authority
June 23, 2017

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

as Borrower

and

ONTARIO FINANCING AUTHORITY

as Lender

REVOLVING CREDIT FACILITY AGREEMENT

Date: November 6, 2017

REVOLVING CREDIT FACILITY AGREEMENT

THIS AGREEMENT is made as of the 6th day of November 2017,

BETWEEN:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital existing under Part II of the *Electricity Act, 1998* (the “**IESO**”) (as Borrower)

AND

ONTARIO FINANCING AUTHORITY, a Crown agency established under the *Capital Investment Plan Act, 1993* (the “**OFA**” and together with the IESO, the “**Parties**”) (as Lender)

RECITALS:

WHEREAS the IESO has requested a revolving credit facility for up to a maximum principal amount of \$2 billion from the OFA for the purpose of supporting the IESO’s role in the implementation and administration of the *Ontario Fair Hydro Plan Act, 2017*.

THEREFORE in consideration of the mutual agreements contained herein (the receipt and adequacy of which are acknowledged), the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the meanings assigned to them below:

“**Advances**” means advances made by the OFA to the IESO under Article 3 and “**Advance**” means any one of such advances, and in the case of an election by the IESO under Section 3.3, includes a “**Continued Advance**”, as defined in Section 3.3(1), as applicable.

"Advances Outstanding" means, at any time, an amount equal to the aggregate principal amount of all Advances outstanding at such time.

"Agreement", "herein", "hereby", "hereof", "hereunder" and similar expressions mean and refer to this agreement and all schedules hereto and all instruments in amendment or confirmation of this agreement and such schedules and not to any particular article or section; and the expression "Article" or "Section" followed by a number means the specified Article or Section of this Agreement.

"Borrowing Notice" has the meaning specified in Section 3.2(1).

"Business Day" means any day that is not a day on which banks are generally authorized or required by law or executive order to be closed in the City of Toronto.

"Clean Energy Adjustment" has the same meaning as that term is defined in the OFHP.

"Commitment" means, at any time, an amount equal to \$2 billion.

"Consolidated Assets" means, at any time, the book value of the assets of the IESO and the Subsidiaries, determined as of such time on a consolidated basis in accordance with GAAP.

"Continued Advance" has the meaning specified in Section 3.3(1).

"Credit Facility" means the revolving credit facility to be made available to the IESO by the OFA under this Agreement for the purposes specified in Section 2.2.

"Current Repayment Date" has the meaning specified in Section 3.3(2).

"Default" means any event which, after the giving of notice, or passage of time, or both, would be an Event of Default.

"Dollars" or "\$" means lawful currency of Canada.

"Election Notice" has the meaning specified in Section 3.3(2).

"Event of Default" has the meaning specified in Section 5.1.

"First Advance" has the meaning specified in Section 3.2(3).

"GAAP" means accounting policies and standards as established by the Chartered Professional Accountants of Canada, at the relevant time and applied on a consistent basis.

"Grid Note" has the meaning specified in Section 3.2(2).

"Indebtedness" means (without duplication), with respect to any Person, whether recourse is to all or a portion of the assets of such Person and whether or not contingent:

- (a) every obligation of such Person for borrowed money;
- (b) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (c) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar instruments;
- (d) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or expenses accrued in the ordinary course of business which are not overdue or which are being contested in good faith);
- (e) every capital lease obligation of such Person;
- (f) the Swap Termination Value of each Swap Contract of such Person; and
- (g) every obligation of the type referred to in paragraphs (a) through (f) of another Person and all dividends of another Person the payment of which, in each case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor, guarantor or otherwise.

"Lien" means any assignment, hypothec, mortgage, lien, pledge, security interest, encumbrance, title retention agreement or other agreement or arrangement to secure the performance of any obligation (including the payment of Indebtedness).

"Material Subsidiary" means, at any time, a Subsidiary which has consolidated assets with a book value of more than \$25 million determined in accordance with GAAP.

"New Repayment Date" has the meaning specified in Section 3.3(2).

"OFHP" means the *Ontario Fair Hydro Plan Act, 2017*, S.O. 2017, c. 16, Schedule 1, including any regulations made thereunder, and all as amended from time to time.

"Permitted Liens" means:

- (a) Liens for taxes and assessments not at the time overdue or any Liens securing workmen's compensation assessments, unemployment insurance or other social security obligations not at the time overdue;
- (b) any Liens or rights of distress reserved in or exercisable under any lease for rent and for compliance with the terms of such lease;
- (c) any obligations or duties, affecting the property of the IESO to any municipality or governmental, statutory or public authority, with respect to any franchise, grant, license

or permit and any defects in title to structures or other facilities arising solely from the fact that such structures or facilities are constructed or installed on lands held by the IESO or such Material Subsidiary under government permits, leases or other grants, which obligations, duties and defects in the aggregate do not materially impair the use of such property, structures or facilities for the purpose for which they are held by the IESO or such Material Subsidiary;

- (d) any deposits or Liens in connection with building contracts, bids or tenders, expropriation proceedings, surety or appeal bonds, costs of litigation when required by law, and public and statutory obligations, Liens or claims incidental to current construction, builders', mechanics', labourers', materialmen's, warehousemen's, carriers' and other similar Liens;
- (e) the right reserved to or vested in any municipality or governmental or other public authority by any statutory provision or by the terms of any lease, license, franchise, grant or permit, that affects any lands, to terminate any such lease, license, franchise, grant or permit or to require annual or their periodic payments as a condition to the continuance thereof;
- (f) any undetermined or inchoate Liens and charges incidental to the current operations of the IESO or a Material Subsidiary that have not at the time been filed against the IESO or such Material Subsidiary; provided, however, that if any such Lien or charge shall have been filed, the IESO or such Material Subsidiary shall be prosecuting an appeal or proceedings for review with respect to which it shall have secured a stay in the enforcement of any such Lien or charge;
- (g) any Lien the validity of which is being contested at the time by the IESO or a Material Subsidiary in good faith and the enforcement of which has been stayed;
- (h) any easements, rights-of-way and servitudes that in the opinion of the IESO will not in the aggregate materially and adversely impair the use or value of the land for the purpose for which it is held or occupied by the IESO or a Material Subsidiary;
- (i) any Liens and privileges arising out of judgments or awards with respect to which the IESO or a Material Subsidiary shall be prosecuting an appeal or proceedings for review and with respect to which it shall have secured a stay of execution pending such appeal or proceedings for review;
- (j) any other Liens of a nature similar to the foregoing which do not in the opinion of the IESO, acting reasonably, materially impair the use of the property subject thereto or the operation of the business of the IESO or any Material Subsidiary or the value of such property for the purpose of any such business; and
- (k) any Lien arising from the IESO's role and obligations under the OFHP, including with respect to any amount received or receivable by the IESO (such as, without limitation, amounts received or receivable in respect of the Clean Energy Adjustment), or any other

lien, whether arising from the action or inaction of IESO, that is created in connection with the OFHP.

"Person" means any individual, corporation, partnership joint venture, association, trust or unincorporated organization or any government or agency or political subdivision thereof.

"Purchase Money Mortgage" means any Lien on property, granted in connection with financing, assumed or given back in payment of, or created or arising by operation of law to secure, the whole or part of the purchase price of such property, or granted in connection with financing the cost in whole or in part of construction or installation of or improvements to any property, provided that such Lien is incurred or assumed at the time or within 12 months after the purchase of such property or the completion of such construction, installation or improvements, as the case may be, and includes any extension, renewal or replacement thereof on the same property if the principal amount of the Indebtedness secured thereby at the time of such extension, renewal or replacement is not increased and if such Lien is not extended to any other property.

"Repayment Date" means, in respect of the repayment of Advances, the repayment date contained in the most recent Borrowing Notice or Election Notice.

"Stated Maturity" when used with respect to any Indebtedness or any installment of interest thereon, means the date specified in or on the agreement or instrument evidencing such Indebtedness as the fixed date on which any principal amount of such Indebtedness or such installment of interest is due and payable.

"Subsidiary" means:

- (a) a corporation more than 50% of the voting power or the outstanding Voting Shares of which is owned, directly or indirectly, by the IESO or by one or more other Subsidiaries or by the IESO and one or more other Subsidiaries; or
- (b) any Person (other than a corporation) in which the IESO, or one or more other Subsidiaries, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

"Swap Contract" means any agreement whether or not in writing, relating to any transaction or derivative transaction including a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, commodity future, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction currency swap, cross-currency rate swap, swaption, currency option or other similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing.

"Swap Termination Value" means, in respect of any one or more Swap Contracts entered into by a Person, after taking into account the effect of any legally enforceable netting agreement relating to such Swap contracts:

- (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) for such Person have been determined in accordance therewith, such termination value(s); and
- (b) for any date prior to the date referred to in paragraph (a), the net amount determined pursuant to the terms of such Swap Contracts that would be payable by such Person if such Swap Contracts were terminated as of such date.

"Voting Shares" of any Person means securities of such Person which ordinarily carry a right to vote for the election of directors (or Persons performing similar functions) of such Person.

Section 1.2 Effect of Headings.

The division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and shall not affect the construction or interpretation hereof.

Section 1.3 Singular, Plural, Gender, Certain Phrases, etc.

Where the context permits and unless such interpretation would be inappropriate, words importing the singular only shall include the plural and vice versa and words importing gender may include any gender. In this Agreement, (a) the words "including" and "includes" mean "including (or includes) without limitation", and (b) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

Section 1.4 Accounting.

Except as otherwise specifically provided herein, all accounting terms shall be applied and construed in accordance with GAAP.

Section 1.5 Non-Business Days.

Whenever any payment to be made hereunder shall be due, any period of time would end, any calculation is to be made or any other action is to be taken on or as of, a day other than a Business Day, such payment shall be made, such period of time shall end, such calculation shall be made and such other actions shall be taken, as the case may be, unless otherwise specifically provided for herein, on or as of the next succeeding Business Day.

ARTICLE 2

REVOLVING CREDIT FACILITY

Section 2.1 Availability.

The OFA agrees, on the terms and conditions of this Agreement, to make Advances to the IESO. The OFA shall make each Advance in Dollars.

Section 2.2 Use of Proceeds.

The IESO shall use the proceeds of Advances for the purposes for which it is authorized to borrow funds pursuant to Regulation 280/14 made under the *Electricity Act, 1998*, as such regulation may be amended or replaced from time to time, subject to the condition that proceeds of Advances may be used only for IESO's financing needs and requirements of any kind arising in connection with the IESO's role with respect to and obligations under the OFHP.

Section 2.3 Credit Facility Limit.

The Advances Outstanding shall not at any time exceed the Commitment. The Credit Facility shall revolve and no payment under the Credit Facility shall reduce the Commitment.

Section 2.4 Mandatory Repayment.

Subject to Sections 2.5 and 5.2, the IESO shall repay each Advance together with the interest accrued thereon on the applicable Repayment Date, and, in any event, shall repay all Advances Outstanding, together with all accrued interest and all other amounts owing hereunder on September 30, 2022.

Section 2.5 Prepayments.

The IESO is not entitled to prepay any part of the Advances Outstanding or the interest accrued thereon without the prior written consent of the OFA.

Section 2.6 Payments under this Agreement.

- (1) The OFA shall make Advances to the IESO under this Agreement to or to the order of the IESO by wire transfer of immediately available funds in accordance with wire transfer instructions given by the IESO to the OFA from time to time, or in such other manner as the IESO may specify to the OFA from time to time.
- (2) The IESO shall make any payment required hereunder to be made by it to the OFA, to or to the order of the OFA, by wire transfer of immediately available funds in accordance with wire transfer instruction given by the OFA to the IESO from time to time, or in such other manner as the OFA may specify to the IESO from time to time. The IESO shall make each such payment in Canadian Dollars.

Section 2.7 Computations of Interest.

- (1) All computations of interest shall be made by the OFA taking into account the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable on the basis of a year of 365 days or 366 days, as the case may be.
- (2) For the purposes of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest which is equivalent to a rate of interest payable under this Agreement for any period of less than a year may be determined by multiplying the rate of interest for such period by a fraction, the numerator of which is the actual number of days in a year commencing on and including the first day in such period and ending on but excluding the corresponding day in the next calendar year and the denominator of which is the actual number of days in such period.

Section 2.8 Limit on Rate of Interest.

- (1) Notwithstanding any provision contained in this Agreement, the IESO shall not be obliged to make any payments of interest or other amounts payable to the OFA hereunder in excess of the amount or rate which would be prohibited by applicable law or would result in the receipt by the OFA of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)).
- (2) In the event that any such payments are limited or prohibited as provided in Section 2.8(1), the OFA shall have no further obligation to make any Advances available hereunder and the Advances Outstanding, together with all accrued interest and all other amounts owing hereunder, shall become immediately due and payable.

Section 2.9 Application of Payments.

All payments made by the IESO under this Agreement shall be applied firstly to the payment of interest payable to the OFA on late payments of principal or interest hereunder, secondly, to the payment of accrued and unpaid interest payable to the OFA hereunder and thirdly, to the payment of the outstanding principal amount of any Advances payable to the OFA.

ARTICLE 3 ADVANCES

Section 3.1 Advances.

The OFA agrees, on the terms and conditions of this Agreement, to make Advances to the IESO under the Credit Facility from time to time on any Business Day prior to September 23, 2022.

Section 3.2 Procedure for Advances.

- (1) Subject to Section 3.3(5), each Advance shall be made subject to two Business Days' prior notice given not later than 10:00 a.m. (Toronto time) by the IESO to the OFA. Each notice of an Advance (a "**Borrowing Notice**") shall be substantially in the form of Schedule 1, other than a Borrowing Notice that is included in an Election Notice as permitted by Section 3.3(3). Each Borrowing Notice shall be irrevocable and binding on the IESO and shall specify (a) the requested date of the Advance; (b) the principal amount of the Advance, and (c) the Repayment Date of the Advance which shall not be earlier than 5 days and not later than 95 days after the date of the requested Advance. Each Borrowing Notice shall also certify the use of proceeds of the Advance which shall in any case be in accordance with Section 2.2. The OFA will make the principal amount of each Advance available to the IESO in accordance with Article 2.
- (2) On or before the date of the first Advance hereunder, the IESO shall execute and deliver to the OFA a grid promissory note in respect of Advances substantially in the form of Schedule 3 (the "**Grid Note**"). The IESO authorizes the OFA to record on the Grid Note (a) the date and amount of each Advance or Continued Advance; (b) the applicable rate of interest for each Advance or Continued Advance; (c) the Repayment Date of each Advance or Continued Advance; (d) the date and amount of each payment of interest and each payment of principal or portion thereof in respect of each Advance or Continued Advance; and (e) Advances Outstanding. Such notations, in the absence of manifest error, shall be *prima facie* evidence of such Advances and repayments; provided that the failure of the OFA to record any amount, rate or date shall not affect the obligation of the IESO to pay the Advances Outstanding and all interest accrued thereon and any other amounts due under this Agreement.
- (3) Respecting the first Advance to be made under this Agreement (the "**First Advance**"), a specified portion thereof (the "**Repayment Amount**") shall be used to repay a portion of the IESO's outstanding indebtedness to the OFA under the credit agreement between the Parties dated January 1, 2005, as amended (the "**Existing Credit Facility**"). The amount of the Repayment Amount shall be detailed in the Borrowing Notice issued in respect of the First Advance. Concurrently with the First Advance, OFA shall provide to IESO an updated grid in respect of the grid note issued under the Existing Credit Facility evidencing the repayment of the Repayment Amount thereunder.

Section 3.3 Elections Regarding Advances.

- (1) The IESO may elect to continue all or a portion of the principal amount of any Advance and any amount of interest on such Advance (together, the "**Continued Advance**") for a further period of at least 5 days and up to a maximum of 95 days beginning on the then current Repayment Date in accordance with Section 3.3(2).
- (2) Each notice to continue an Advance for a further period (an "**Election Notice**") shall be provided by the IESO to the OFA at least two Business Days prior to the Repayment Date of the Advance (the "**Current Repayment Date**"), and in each case, not later than

10:00 a.m. (Toronto time). Each such Election Notice shall be given substantially in the form of Schedule 2 and shall be irrevocable and binding upon the IESO and shall specify: (a) the Current Repayment Date; (b) the new aggregate total amount of the proposed Continued Advance; (c) the amount of interest or principal, if any, to be paid or re-paid by the IESO with respect to such Advance on the Current Repayment Date; and (d) the new Repayment Date of the proposed Continued Advance, which shall be no earlier than 5 days and not later than 95 days after the current Repayment Date (the “**New Repayment Date**”). If the IESO fails to deliver an Election Notice to the OFA for any Advance as provided herein, such Advance shall be repayable on the applicable Repayment Date.

- (3) An Election Notice with respect to a proposed Continued Advance may include a Borrowing Notice for a further Advance proposed to be made on the Current Repayment Date. The Repayment Date of such further Advance shall be the New Repayment Date of the Continued Advance that is specified in the Election Notice. Such Borrowing Notice shall be given substantially in the form of Schedule 2.
- (4) The calculation of interest on a Continued Advance shall be determined in the same manner as an Advance under Section 3.4 and shall be recorded on the Grid Note in accordance with Section 3.2(2).
- (5) Any portion of an Advance not continued for a further period in accordance with Section 3.3(2) shall be repayable on the applicable Repayment Date.
- (6) The Credit Facility shall at all times rank *pari passu* with all other unsubordinated and unsecured Indebtedness of the IESO, subject to the existence of any Liens that secure Indebtedness, as permitted by subsections 4.6 (a) through (e) hereof.
- (7) All amounts owing in respect of the Advances shall be paid without exercising any right of set off or counterclaim by the IESO.

Section 3.4 Interest on Advances.

- (1) The IESO shall pay interest on the unpaid principal amount of each Advance in accordance with this Section 3.4 from and including the date of such Advance until the principal amount of such Advance is repaid in full.
- (2) Interest shall accrue on the principal amount of each Advance from and including the date of the Advance to but excluding the Repayment Date of such Advance, at an annual rate equal to the Province of Ontario’s cost of funds for borrowings with a similar term as determined by the OFA plus 0.25 percent per annum, before as well as after the date such principal amount or interest thereon becomes due hereunder and both before and after Default and shall be payable on the Repayment Date for such Advance. Any amount of interest arising hereunder which is not paid when due shall bear interest at the same rate compounded monthly at which it accrued from the due date for payment until the date of actual payment. The amount of interest payable on an Advance will be calculated by the

OFA by dividing the interest rate applicable to the Advance by 365 or 366, as the case may be, and multiplying the result by the principal amount of the Advance and further multiplying the result by the number of days in the period from the date of the Advance to the Repayment Date of the Advance.

- (3) If the IESO elects to continue an Advance in accordance with Section 3.3(2), the OFA shall determine the interest rate applicable after the original Repayment Date of the Advance and endorse the said rate on the grid forming part of the Grid Note in respect of Advances held by it.

Section 3.5 Conditions Precedent

The obligation of the OFA to make the Advances to the IESO pursuant to Section 2.1 is subject to the following conditions being satisfied to the OFA's satisfaction at the time of making each Advance:

- (a) that the representations and warranties of the IESO contained in this Agreement are true and correct as at the date of making the Advance;
- (b) that no Event of Default has occurred and is continuing;
- (c) that there shall, in the reasonable opinion of the OFA, have been no material adverse change in the financial condition of the IESO or a Material Subsidiary; and
- (d) that the OFA has received such other documentation which it has reasonably requested to ensure that the IESO is in compliance with the terms and conditions of this Agreement, including certified true copies of any necessary resolutions, a written legal opinion from counsel to the IESO confirming that the borrowing is within the legal powers of the IESO and that the Agreement is a direct, unsecured obligation of the IESO enforceable against the IESO in form satisfactory to the OFA.

ARTICLE 4 COVENANTS OF THE IESO

Section 4.1 Repayment of Advances.

The IESO will duly and punctually pay all amounts owing under this Agreement in accordance with the terms and subject to the conditions of this Agreement.

Section 4.2 IESO will Maintain its Corporate Existence.

The IESO will at all times maintain its corporate existence.

Section 4.3 Maintenance of Properties.

The IESO will cause all property owned by the IESO or any Material Subsidiary to be maintained and kept in good condition, repair and working order, all as in the judgment of the IESO or any Material Subsidiary may be necessary for the proper operation of such property, except as and to the extent that the IESO or any Material Subsidiary may be prevented from doing so by fire, strikes, lockouts, walkouts, labour unrest, acts of God, inability to obtain labour or materials, enemy action, governmental restrictions, civil commotion, or unavoidable casualty or similar causes; provided, however, that nothing in this Section 4.3 shall prevent the IESO or any Material Subsidiary from discontinuing the maintenance of any such property or decommissioning any such property if such discontinuance or decommissioning is, in the judgment of the IESO or any such Material Subsidiary, desirable in the conduct of its business or the business of any such Material Subsidiary, or has been directly or indirectly requested or required by the Province of Ontario.

Section 4.4 Insurance.

The IESO will cause all property owned by the IESO or any Material Subsidiary which is of a character usually insured by companies operating similar businesses to be insured and kept insured with reputable insurers (which may include associations or other organizations for mutual or reciprocal insurance) against loss or damage by fire or other hazards or risks of the nature and to the extent that such property is usually insured by companies operating similar businesses.

Section 4.5 Conduct of Business.

The IESO will, and will cause the Subsidiaries to, carry on and conduct their respective businesses in accordance with good business practice.

Section 4.6 Negative Pledge.

The IESO will not, and will not permit any Material Subsidiary to, create, incur or assume any Lien, charging the interest of the IESO or any Material Subsidiary in any property, to secure any obligations (including any Indebtedness) unless, at or prior to the time such Lien is created, incurred or assumed, all amounts owing under this Agreement are secured equally and rateably with any and all such obligations secured or to be secured by such Lien, for so long as such obligations shall be secured, provided, however, that the foregoing covenant shall not prevent, restrict or apply to any of the following:

- (a) the creation, incurrence or assumption of any Purchase Money Mortgage;
- (b) the grant of any Lien in the normal course of business to any banks or financial institutions for present or future Indebtedness of the IESO or any Material Subsidiary to such banks or financial institutions payable on demand or having an original term to maturity less than 18 months;

(c) Permitted Liens;

(d) any extension, renewal or replacement of any of the Liens referred to in Sections 4.6(a), (b) or (c), provided that the principal amount secured by any such Lien outstanding immediately before such extension, renewal or replacement or refunding is not thereby increased; and

(e) any Lien charging the interest of the IESO or any Material Subsidiary in any property to secure any Indebtedness, other than any Lien referred to in Sections 4.6(a), (b) or (c), provided that, at the time such Lien is created, incurred or assumed, the principal amount of such Indebtedness, together with the aggregate principal amount of all other Indebtedness secured by Liens permitted pursuant to this Section 4.6(e) which is outstanding at such time does not exceed 10% of Consolidated Assets at such time.

Section 4.7 Payment of OFA Expenses

In addition to any liability of the IESO to the OFA under any other provision of this Agreement, the IESO will, on demand, reimburse and indemnify OFA for all reasonable costs, charges and expenses, including reasonable fees and disbursements of its agents and counsel, incurred by OFA in connection with the Agreement (including those services incurred in the preservation of rights under or enforcement of this Agreement at any time during the continuance of a Default or Event of Default and for any reasonable loss or expense incurred by OFA as a result of any failure by the IESO to fulfill any of its obligations under this Agreement). All such costs, charges and expenses shall bear interest at the Province of Ontario's cost of funds plus 0.25 percent per annum (as determined by the OFA) calculated and payable monthly not in advance from in each case from the date on which the OFA incurs the cost, charge or expense until the date on which the IESO reimburses the OFA therefor. The OFA agrees, acting reasonably, to invoice the IESO for any such costs, charges and expense as they are incurred, together with interest at the aforesaid rate (with interest on overdue interest).

Section 4.8 Reporting.

The IESO will promptly provide to the OFA any reports or supporting documents that the OFA may request from time to time.

Section 4.9 Late Repayment of Advance.

In the event that the IESO fails to repay the principal amount of any Advance and all interest accrued thereon when due, the IESO shall pay interest on the unpaid amount of such Advance at the same rate compounded monthly at which it accrued from the due date for payment until the date of actual payment.

ARTICLE 5
EVENTS OF DEFAULT AND REMEDIES

Section 5.1 Event of Default.

Wherever used in this Agreement, the term "Event of Default" means any of the following:

- (a) the IESO's failure to pay any interest upon any Advance when it becomes due and payable, if such failure continues for a period of 3 Business Days;
- (b) failure to pay the principal amount of any Advance on the applicable Repayment Date or the Advances Outstanding, all interest accrued thereon and all other amounts owing under this Agreement on September 30, 2022;
- (c) failure on the part of the IESO to observe or perform its obligations set forth in Section 4.1;
- (d) failure on the part of the IESO to observe or perform any of the other covenants or agreements on its part contained in this Agreement for a period of 20 days after the date on which written notice of such failure shall have been given to the IESO by the OFA;
- (e) any representation or warranty made by the IESO in this Agreement or in any certificate or other document at any time delivered hereunder to the OFA was incorrect or misleading in any material respect;
- (f) one or more breaches by the IESO of its covenants under one or more evidences of Indebtedness or instruments governing or securing the same with a principal amount then outstanding, individually or in the aggregate, of at least \$5 million, which breaches:
 - (i) constitute a failure to pay such Indebtedness when due and payable at its final Stated Maturity, continue after any applicable grace period and have not been cured or waived or ceased to exist, or
 - (ii) have resulted in such Indebtedness becoming or being declared due and payable prior to its final Stated Maturity (and which acceleration or declaration has not been waived or rescinded);
- (g) the IESO or any Material Subsidiary:
 - (i) becomes unable to meet its obligations as they generally become due or has ceased paying its current obligations in the ordinary course of business as they generally become due;
 - (ii) admits in writing its inability to pay its debts generally or makes a general assignment for the benefit its creditors or files a proposal or other scheme

of arrangement involving the rescheduling or composition of its Indebtedness;

- (iii) institutes or has instituted against it any proceeding seeking:
 - (A) to adjudicate it as bankrupt or insolvent,
 - (B) liquidation, winding-up or reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors including any plan of compromise or arrangement or other corporate proceeding involving or affecting its creditors, or
 - (C) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its assets,and in the case of any such proceeding instituted against it (but not instituted by it), either the proceeding remains undismissed or unstayed for a period of 30 days, or any remedy sought in any such proceeding (including the entry of order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its properties and assets) occurs; or
- (iv) takes any corporate action to authorize any of the actions in Sections 5.1 (g)(i) to (iii); or

- (h) if there shall be rendered against the IESO or any Material Subsidiary a final judgment or judgments for the payment of money in an aggregate amount in excess of \$5 million by a court or courts of competent jurisdiction, and the IESO or any Material Subsidiary shall have failed to satisfy such judgments or to appeal therefrom (or from the order, decree or process pursuant to which such judgments were granted, passed, entered or affirmed) and to obtain a stay of execution thereof within the period prescribed by law for appeals, and to have such judgments discharged within 30 days after the expiration of such period or the period of any such stay, whichever shall later expire.

Section 5.2 Acceleration of Maturity; Rescission and Annulment.

If an Event of Default occurs and is continuing, then and in every such case the OFA may at its option, in addition to any other remedy available to the OFA at law, by written notice to the IESO, take any or all of the following actions:

- (a) suspend the right of the IESO to request any further Advance until the Event of Default has been cured to the OFA's satisfaction or, if the Event of Default is not

cured within three (3) Business Days after the date on which written notice of such Event of Default shall have been given to the IESO by the OFA, declare all amounts owing hereunder including all interest accrued to be due and payable immediately, by a notice in writing to the IESO, and upon any such declaration all such amounts shall become immediately due and payable.

- (b) invoke the Intercept pursuant to section 5.7 of this Agreement to require payment of any amount due and payable under this Agreement.

Section 5.3 Suits for Enforcement by the OFA.

If an Event of Default occurs and is continuing, the OFA may proceed to protect and enforce the rights vested in it by this Agreement either by suit in equity or by action at law or by proceedings in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Agreement or in aid of the exercise of any power granted in this Agreement, or to enforce any other legal or equitable right vested in the OFA by this Agreement or by law.

Section 5.4 OFA May File Proof of Claim.

If proceedings for the receivership, insolvency, liquidation, bankruptcy, winding-up, reorganization, arrangement or composition of the IESO under any applicable law are pending, or if a receiver, trustee, custodian or other similar official shall have been appointed for the property of the IESO, or if any other judicial proceedings relative to the IESO, its creditors or its property are pending, the OFA shall be entitled and empowered, by intention in such proceeding or otherwise:

- (a) to file and prove a claim for all amounts owing under this Agreement and to file such other papers or documents as may be necessary or advisable in order to have the claims of the OFA (including any claim for fees and disbursements of the OFA, its agents and counsel) allowed in such judicial proceeding; and
- (b) to collect and receive any monies or other property payable or deliverable on any such claim.

Section 5.5 Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the OFA is intended to be exclusive of any other such right or remedy, and every such right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.6 Delay or Omission not Waiver.

No delay or omission of the OFA to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right or remedy given by this Article 5 or by law to OFA may be exercised from time to time, and as often as may be deemed expedient, by the OFA.

Section 5.7 Intercept

- (a) The IESO hereby acknowledges that, in accordance with the terms of the letter agreement of even date herewith entered between the Ministry of Energy, the IESO and the OFA made pursuant to Section 23 of the *Capital Investment Plan Act, 1993* (the “**Intercept Letter**”), the Minister of Finance is entitled to deduct only from those monies appropriated by the Legislature for payment through the Ministry of Energy to the IESO (“**Appropriated Funds**”), amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under this Agreement. On the occurrence of an Event of Default relating to a failure by IESO to pay when due any amounts owing hereunder, subject to the OFA’s compliance with any relevant provisions hereof and as set out in the Intercept Letter, the Minister of Finance is irrevocably authorized to deduct from the Appropriated Funds amounts equal to any amounts that the IESO has failed to pay to the OFA in accordance with the provisions of this Agreement and to pay such amounts directly to the OFA (“**Intercept**”).
- (b) If, after following the process specified in the Intercept Letter (including, without limitation, allowing for a reasonable cure period on the terms specified therein), the OFA determines that it is necessary to request the Minister of Finance to exercise the Intercept, the OFA will give written notice to the Minister of Finance, with a copy to the Ministry of Energy, detailing the IESO’s failure to pay when due any amounts owing hereunder and requesting the deduction from the Appropriated Funds of amounts equal to the amounts that the IESO has failed to pay to the OFA under this Agreement.
- (c) The IESO agrees that any notice from the OFA to the Minister of Finance in relation to this section 5.7 (Intercept) may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance and, upon receipt of such notice, an amount equal to the amount that the IESO has failed to pay when due to the OFA on account of indebtedness under this Agreement shall be deducted from the Appropriated Funds and paid to the OFA.
- (d) For further certainty, the OFA acknowledges and agrees that the Intercept as provided for herein and in the Intercept Letter shall not apply with respect to any funds appropriated by the Legislature for payment to the IESO through ministries other than the Ministry of Energy or through Ontario Climate Change Solutions Deployment Corporation.
- (e) The parties agree that, with respect to the exercise of the Intercept generally, the terms of this section 5.7 shall be applied consistently with the terms set out in the Intercept Letter which shall apply in full. Notwithstanding the foregoing, in the event of a conflict or

inconsistency between the terms and conditions of the Intercept Letter and the terms and conditions contained in this Agreement, the terms and conditions contained in this Agreement shall prevail.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF IESO

Section 6.1 Representations and Warranties of IESO

The IESO represents and warrants to the OFA that:

- (a) the borrowing of money (including principal and accrued interest) by the IESO and the execution, delivery and performance of this Agreement are within the powers and capacities of the IESO and have been duly authorized by all necessary legal action and proper proceedings;
- (b) the execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the compliance with the terms and conditions of this Agreement will not conflict with or result in a breach of any of the terms or provisions of the constituting documents or by-laws of the IESO, laws of Ontario, including laws of Canada applicable therein, applicable to the IESO or any contractual or other obligation binding on the IESO;
- (c) this Agreement will, when executed and delivered, constitute the legal, valid and binding obligation of the IESO enforceable against it in accordance with its terms; and
- (d) the monies advanced under this Agreement shall be used only by the IESO for the purposes set out in Section 2.2.

Section 6.2 Continuation of Representation and Warranties

The representations and warranties set out in Section 6.1 herein shall survive the execution and delivery of this Agreement, the making of each Advance by the OFA, notwithstanding any investigations or examinations which may be made by counsel for the OFA.

**ARTICLE 7
GENERAL**

Section 7.1 Notices.

Any notice, direction or other communication to be given under this Agreement shall be in writing and given by personally delivering it or sending it by telecopy or other means of electronic communication addressed:

If to the IESO, to it at:

Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1

Attention: Chief Financial Officer
Telephone: (416)969-6232
Facsimile: (905)403-6913

If to the OFA, to it at:

Ontario Financing Authority 1 Dundas Street West
Suite 1400 Toronto, Ontario M7A 1Y7

Attention: Executive Director & Chief Investment Officer – Capital Markets Division
Telephone: (416)325-8930
Facsimile: (416)860-8346

provided that any Borrowing Notice or Election Notice shall be addressed as indicated on Schedule 1 or Schedule 2 respectively.

Any communication hereunder shall be deemed to have been validly and effectively given if (a) personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Toronto time), otherwise on the next Business Day, (b) transmitted by facsimile or other means of electronic communication, on the Business Day following the date of transmission provided that, on the date of transmission, the addressee of such communication was notified by telephone of such transmission. Any party may from time to time change its address for communications hereunder by notice give in accordance with this Section 7.1 and until changed by like notice, such changed address shall be such party's address for purposes of this Section 7.1.

Section 7.2 Successors and Assigns.

This Agreement shall be binding on and enure to the benefit of the OFA and the IESO and their respective successors and permitted assigns, except that the IESO shall not, without the

prior written consent of the OFA assign, pledge or hypothecate any rights or obligations with respect to this Agreement.

Section 7.3 Amendments.

This Agreement may only be amended or otherwise modified by written agreement executed by each of the Parties.

Section 7.4 Waiver.

- (1) No waiver of any provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar) of this Agreement nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.
- (2) No failure on the part of a party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right and any single or partial exercise of such right shall not preclude another or further exercise of such right or the exercise of any other right.

Section 7.5 Further Assurances.

Each of the IESO and the OFA shall, from time to time, do all such acts and things and execute and deliver all such instruments as may be reasonably required to give effect to, and carry out the terms of, this Agreement

Section 7.6 Severability.

In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions in this Agreement shall not in any way be affected or impaired thereby.

Section 7.7 Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

Section 7.8 Entire Agreement.

This Agreement, including the schedules hereto and any other agreements expressly referred to herein, constitutes the whole agreement between the Parties with respect to the matters dealt with in it, and it supersedes any prior agreement, undertakings, discussions and the like respecting the matters dealt with in this Agreement and entered into by the Parties before the date the OFA signs this Agreement.

Section 7.9 Counterparts.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

ONTARIO FINANCING AUTHORITY

Per: _____

Name:

Title:

I have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM
OPERATOR

Per: Kimberly Marshall

Name: Kimberly Marshall

Title: Vice President, Corporate Services;
Chief Financial Officer; Treasurer

I have authority to bind the corporation.

SCHEDULE 1

FORM OF BORROWING NOTICE

Delivered Via Email: CASHP@ofina.on.ca

Ontario Financing Authority ("OFA")
1 Dundas Street West, Suite 1400
Toronto, Ontario
M7A 1Y7

Date: [insert date]

Attention: Cash Management

Dear Sirs:

The undersigned, the Independent Electricity System Operator ("IESO"), refers to the Revolving Credit Facility Agreement between the IESO and the OFA dated October (·), 2017 (as amended, supplemented or restated from time to time, the "Agreement", the terms defined therein being used herein as therein defined), and gives you notice pursuant to Section 3.2 of the Agreement that the IESO requests an Advance under the Agreement, and, in connection with such request, sets forth below the information relating to such Advance (the "Proposed Advance"), as required by Section 3.2(1) of the Agreement:

- (a) The date of the Proposed Advance, being a Business Day is _____;
- (b) The principal amount of the Proposed Advance is \$ _____;
- (c) The Repayment Date of the Proposed Advance is _____. [Not earlier than 5 days and not later than 95 days after the date of the Proposed Advance.]

Such request of the Proposed Advance shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

Use of Funds

The IESO hereby certifies that the funds comprising the Proposed Advance requested pursuant to this Notice will be used for the following purpose(s): [specify purpose(s) and any sub-categories of borrowing purposes, as applicable]

The IESO hereby certifies that:

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

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.

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

Any and all funds received under the Agreement will be expended or held solely for the purpose for which they are authorized to be used under the Agreement; no part of the funds to be received pursuant to this Notice shall be used for any other purpose.

Yours truly,

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

Per: _____

Name:

Authorized Signatory

SCHEDULE 2

FORM OF ELECTION NOTICE

Delivered Via Email: CASHP@ofina.on.ca

Ontario Financing Authority ("OFA")
1 Dundas Street West, Suite 1400
Toronto, Ontario
M7A 1Y7

Date: [insert date]

Attention: Cash Management

Dear Sirs:

I. ELECTION NOTICE

The undersigned, the Independent Electricity System Operator ("IESO"), refers to the Revolving Credit Facility Agreement between the IESO and the OFA dated October (·), 2017 (as amended, supplemented or restated from time to time, the "Agreement", the terms defined therein being used herein as therein defined), and gives you notice pursuant to Section 3.3 of the Agreement that the IESO elects to continue for an additional term all or a portion of an Advance or a Continued Advance, as the case may be, and in connection with such election sets forth below the information relating to such election as required by Section 3.3(2) of the Agreement:

- (a) The date of the proposed election, being a Business Day (being the Current Repayment Date) is _____.
- (b) The aggregate amount of the proposed Continued Advance is \$_____, which is comprised of:
 - i. principal amount (or portion thereof) of Advance which is to be continued \$_____; and
 - ii. accrued interest on Advance which will not be paid on or before the Current Repayment Date \$_____;
- (c) The IESO will pay on the Current Repayment Date the following amount with respect to the Advance (if any): \$_____.
- (d) The New Repayment Date, being a Business Day, applicable to such proposed Continued Advance is _____. [Insert date not earlier than 5 days and not later than 95 days after the current Repayment Date for the Advance.]

Such election shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

II. BORROWING NOTICE [to be included if applicable]

The IESO gives you notice pursuant to Section 3.3(3) of the Agreement that the IESO requests a further Advance under the Agreement on the Current Repayment Date, with a Repayment Date of the New Repayment Date as specified above, and in connection with such request, sets forth below the information relating to such Advance (the "Proposed Advance"):

Amount of the Proposed Advance: \$ _____

The total aggregate amount of the proposed Continued Advance and Proposed Advance pursuant to this Notice is: \$ _____

Such request of the Proposed Advance shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

Use of Funds

The IESO hereby certifies that the funds comprising the Proposed Advance requested pursuant to this Notice, if any, will be used for the following purpose(s): [specify purpose(s) and any sub-categories of borrowing purposes, as applicable]

The IESO hereby certifies that:

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

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.

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

Any and all funds received under the Agreement are being used solely as authorized under the Agreement and are not being used for any other purpose.

Yours truly,

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Per: _____

Name:

Authorized Signatory

SCHEDULE 3 – FORM OF GRID NOTE

INDEPENDENT ELECTRICITY SYSTEM OPERATOR GRID NOTE

Principal Amount: Up to \$2,000,000,000

Date:

FOR VALUE RECEIVED, INDEPENDENT ELECTRICITY SYSTEM OPERATOR (the "IESO"), incorporated under the laws of the Province of Ontario and having its principal office and place of business at Toronto, Ontario, **PROMISES TO PAY** to or to the order of **ONTARIO FINANCING AUTHORITY ("OFA")** at its offices at Toronto, Ontario or at such other place as the OFA may designate, the principal amount of each and all Advances made by the OFA to the IESO, all as recorded by the OFA on the grid attached to and forming part of this Grid Note, in lawful money of Canada, with interest on each Advance at the rate, calculated in the manner and payable at the times specified in the Revolving Credit Facility Agreement (as defined below).

OFA shall and is unconditionally and absolutely authorized and directed by the IESO to record on the Grid Note (i) the date and amount of each Advance, including any Advance all or a portion of which is continued by election under Section 3.3; (ii) the applicable rate of interest for each Advance; (iii) the repayment date of each Advance; (iv) the date and amount of each payment of interest and each payment of principal in respect of each Advance; and (v) the outstanding principal amount of the Grid Note. Such notations, in the absence of manifest error, shall be *prima facie* evidence of such advances and repayments; provided that the failure of the OFA to record the same shall not affect the obligations of the Borrower to pay such amounts to the OFA.

The outstanding principal amount of each Advance under this Grid Note together with all interest accrued thereon shall become due and payable as specified in the Revolving Credit Facility Agreement dated [INSERT DATE] as amended, supplemented or restated from time to time, between the Borrower and the OFA (the "Agreement"). All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Agreement.

This Grid Note is issued pursuant to, and is subject to and payable in accordance with the provisions of, the Agreement.

This Grid Note is not transferable or negotiable without the prior written consent of the IESO.

The IESO waives presentment for payment and notice of non-payment.

This Grid Note shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the IESO has executed this Grid Note.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Per: _____

Name:
Authorized Signatory

Revolving Credit Facility Grid Note

Ontario Financing Authority Line of Credit Grid Note

Entity : Independent Electricity System Operator
 Loan Limit:
 Project:
 Schedule of loan transactions to:
 Loan Advanced to:

New Loan and/or Rollover					Actual Repayment					
New Loan or Rollover Date	Principal Advanced or Rollover Amount	Interest Rate	Repayment Date	Total No. Of Days	Interest Amount	Actual Repayment	Principal	Interest	Actual Repayment Date	Actual No. Of Days

From: Sarah Harris []
To: Opal Kandelas [Opal.Kandelas@ofina.on.ca]
Subject: FHP
Date: Wednesday, October 25, 2017 14:54:20
Attachment 1: FW: OIC PDF
Attachment 2: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement
Attachment 3: FW: Fair Hydro -- Change of Law Assumption Agreement
Attachment 4: FW: Fair Hydro -- Change of Law Assumption Agreement
Attachment 5: FW: Fair Hydro -- Change of Law Assumption Agreement

Hi Opal,

In relation to the Fair Hydro Plan, Malle thought it was a good idea for Documentation to be involved in reviewing the agreements, particularly with a view of structuring the Crown's guarantee as a contingent liability in the event that the funding from rate payers is no longer available to the OPG Asset.

Lot of fun, I'm sure!

Sarah

From: Malle Hanslep (MOF) []
To: Sarah Harris [Sarah.Harris@ofina.on.ca]
CC: Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]
Subject: FW: OIC PDF
Date: Wednesday, October 25, 2017 14:46:43
Attachment 1: DOC.PDF

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

From: Whitfield, Tobias P. (MOF)
Sent: September 19, 2017 1:33 PM
To: Strathy, Anna (OFA); Hanslep, Malle (MOF)
Subject: OIC PDF

PDF of OIC attached.

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456

Original Message
From: ONP2F00851305@ontario.ca
Sent: Tuesday, September 19, 2017 12:35 PM
To: Whitfield, Tobias P. (MOF)
Reply To: ONP2F00851305@ontario.ca
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF, Multi-Page

WorkCentre Location: machine location not set
Device Name: ONP2F00851305

From: Malle Hanslep (MOF) []
To: Sarah Harris [Sarah.Harris@ofina.on.ca]
CC: Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]
Subject: FW: Fair Hydro -- Revised MTSA and IESO Security Agreement
Date: Wednesday, October 25, 2017 14:45:30
Attachment 1: image1df5da.JPG
Attachment 2: #24367979v3_TorysAtWork_ - Fair Hydro - MTSA (Osler Oct 20 Draft).DOCX
Attachment 3: Blackline_Fair Hydro - Master Transfer Servicing Agreement (Alternative Funding Rebate Regulation Version) - 24367979v3.pdf
Attachment 4: IESO Security Agreement.docx

Hi – These are a lot of documents.

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: October 25, 2017 12:12 PM
To: Mansoori, Nina; Thouin, Alena (ENERGY); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); STEPHEN.ASHBOURNE@blakes.com
Cc: Feldman, Michael; Olusoga, Yinka; Saulnier, Brett; Ramchandani, Rima; WONG Leslie -LAWDIV; 'LEE John -TREASURY'; RYFA Ken -TREASURY
Subject: RE: Fair Hydro -- Revised MTSA and IESO Security Agreement

Malle and team, attached is a revised draft of the MTSA (clean and blacklined to the prior draft circulated to Steve), together with an initial draft of the IESO security agreement (as a reminder, in order to achieve a AAA rating in light of the moratorium period, it has been proposed that IESO enter into this security agreement in favour of the financing entity as security for the performance of its regulatory obligation to pay carrying costs during the moratorium).

FYI, these documents are currently under review by the IESO and Stikeman.

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[\[torys.com\]](mailto:torys.com)

[\[torys.com\]](http://torys.com)

From: Mansoori, Nina
Sent: October-24-17 5:21 PM
To: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; STEPHEN.ASHBOURNE@blakes.com
Cc: Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: RE: Fair Hydro -- Form of ISDA Schedule

All,

We attach a draft Schedule for an ISDA Master Agreement to be used for hedging purposes in connection with the issuance of Fair Hydro debt. This draft is subject to the working group's review and comment.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332

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From: Malle Hanslep (MOF) []
To: Sarah Harris [Sarah.Harris@ofina.on.ca]
CC: Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]
Subject: FW: Fair Hydro -- Change of Law Assumption Agreement
Date: Wednesday, October 25, 2017 14:44:42
Attachment 1: image001.jpg
Attachment 2: Response to OPG comments on Change of Law Protection Agreement.docx

From: Whitfield, Tobias P. (MOF)
Sent: October 13, 2017 4:47 PM
To: Mansoori, Nina
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'; 'LADAK Lubna -TREASURY'
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

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

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'; '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.

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

Sent: September-27-17 4:21 PM

To: Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>

Cc: 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>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.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>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

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

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

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

Sent: September 25, 2017 12:21 PM

To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)

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

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

[\[torys.com\]](http://torys.com)

From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: 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>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
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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From: Malle Hanslep (MOF) []
To: Sarah Harris [Sarah.Harris@ofina.on.ca]
CC: Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]
Subject: FW: Fair Hydro -- Change of Law Assumption Agreement
Date: Wednesday, October 25, 2017 14:44:02
Attachment 1: Warehouse Supplement - October 17, 2017.doc

FYI

-----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'; '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

79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada |
www.torys.com

-----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>

Cc: 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.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>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.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>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>

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

Counsel, Legal Services Branch

Ministry of Finance

777 Bay Street, 11th Floor

Toronto, ON, M5G 2C8

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Mansoori, Nina

Sent: Friday, October 20, 2017 10:23 AM

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'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina

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>

Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.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>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.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>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Mansoori, Nina <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>>

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' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>

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

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

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'; '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

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

Sent: September-27-17 4:21 PM

To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; 'WONG Leslie -LAWDIV'

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Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>;
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'STEPHEN.ASHBOURNE@blakes.com'
<STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>

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

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>

Phone: 416-325-1456

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

Sent: September 25, 2017 12:21 PM

To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)

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

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

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[Torys LLP] <https://urldefense.proofpoint.com/v2/url?u=http-3A__www.torys.com_&d=DwlGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjin9FtiQ&r=UKMqlrEhOd5FohQQ_i9mGM0DWcS8WVSb-i_5BYugB90&m=LUBzr7krDi-parEHITBDWPUwyenLLaJJXZ4chFSPzFE&s=L2Q6u9gmTig_RhsiD5echtl-iY4ykmWhbqTG3J5Cq9o&e= >

From: Ramchandani, Rima

Sent: September-19-17 9:55 PM

To: 'STEPHEN.ASHBOURNE@blakes.com'
<STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; '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>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>

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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From: Malle Hanslep (MOF) []
To: Sarah Harris [Sarah.Harris@ofina.on.ca]
CC: Tobias P. Whitfield (MOF) [Tobias.Whitfield@ontario.ca]
Subject: FW: Fair Hydro -- Change of Law Assumption Agreement
Date: Wednesday, October 25, 2017 14:43:00
Attachment 1: image001.jpg
Attachment 2: 12917730-v1-Questions (Adherence Conditions).docx

This will help with some background.

From: Whitfield, Tobias P. (MOF)
Sent: October 24, 2017 1:00 PM
To: Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Strathy, Anna (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Further to OPG's response to our proposals, please find attached a discussion document drafted by our outside legal counsel Stephen Ashbourne and based on discussions amongst our Provincial legal teams.

This document sets out a number of questions that we need to consider and answer in order to respond to OPG with the Province's position.

A meeting amongst this group would be useful to discuss these issues and to inform a response to OPG.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

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

Sent: October 18, 2017 9:53 AM

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'; 'LADAK Lubna -TREASURY'; Mansoori, Nina

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

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [<mailto:Tobias.Whitfield@ontario.ca>]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.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>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.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>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
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

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

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'; '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

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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

Sent: September-27-17 4:21 PM

To: Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>

Cc: 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>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.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>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>

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

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

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

Sent: September 25, 2017 12:21 PM

To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)

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

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[\[torys.com\]](mailto:torys.com)

[\[torys.com\]](http://torys.com)

From: Ramchandani, Rima

Sent: September-19-17 9:55 PM

To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>;
Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)'
<Tobias.Whitfield@ontario.ca>

Cc: 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>; Ramchandani, Rima <rramchandani@torys.com>;
Mansoori, Nina <nmansoori@torys.com>

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.

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From: Sarah Harris []
To: John Kim [John.Kim@ofina.on.ca]
CC: Ken Kandeepan [Ken.Kandeepan@ofina.on.ca]; Mike Manning [Mike.Manning@ofina.on.ca]; Opal Kandelas [Opal.Kandelas@ofina.on.ca]; William Tan [William.Tan@ofina.on.ca]
Subject: FW: IESO/OFA - FH line
Date: Wednesday, September 19, 2018 13:51:36
Attachment 1: FH rollover notice with advance.pdf

Hi John,

Anthony at IESO has approached us to begin discussions on an increase to the \$2B cap to the FHP. Is this a discussion that you would initially be having with IESO?

Thanks,
Sarah

From: Anthony Martinello [mailto:Anthony.Martinello@ieso.ca]
Sent: Wednesday, September 19, 2018 12:56 PM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: William Tan <William.Tan@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO/OFA - FH line

We need to begin discussions in Oct 2018 on making an amendment to increase the \$2B cap.

The FH Trust did not purchase this month's variance and I have no further info on if or when a purchase will occur.

IESO will be at \$1.175B drawn this month.

Should I set up time to talk?

From: Sarah Harris [<mailto:Sarah.Harris@ofina.on.ca>]
Sent: August 29, 2018 10:59 AM
To: Anthony Martinello
Cc: William Tan
Subject: RE: IESO/OFA - FH line

CAUTION: This email originated from outside of the organization. Exercise caution when clicking on links or opening attachments even if you recognize the sender.

Thank you, Anthony, for the head's up. I will communicate your message internally.

Thanks,
Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]

Sent: Wednesday, August 29, 2018 8:49 AM

To: William Tan <William.Tan@ofina.on.ca>

Cc: Olga Whiteley <Olga.Whiteley@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>

Subject: IESO/OFA - FH line

Will

Just a courtesy email ...nothing to do yet.

The IESO/OFA Fair Hydro line of credit is at about \$1 billion drawn out of the \$2 billion max capacity. We are drawing on avg about \$200-300million/month.

The Fair Hydro Trust has not purchased the IESO's reg asset for a few months....if this continues I will be coming back to OFA to seek to increase the line of credit.

Regards.

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SCHEDULE 2 ELECTION NOTICE

September 19, 2018

Ontario Financing Authority (“OFA”)
1 Dundas Street West, Suite 1400
Toronto, Ontario
M7A 1Y7
Delivered Via Email: CASHP@ofina.on.ca

Attention: Cash Management

Dear Sirs:

I. ELECTION NOTICE

The undersigned, the Independent Electricity System Operator (“IESO”), refers to the Revolving Credit Facility Agreement between the IESO and the OFA dated November 21, 2017 (as amended, supplemented or restated from time to time, the “Agreement”, the terms defined therein being used herein as therein defined), and gives you notice pursuant to Section 3.3 of the Agreement that the IESO elects to continue for an additional term all or a portion of an Advance or a Continued Advance, as the case may be, and in connection with such election sets forth below the information relating to such election as required by Section 3.3(2) of the Agreement:

- (a) The date of the proposed election, being a Business Day (being the Current Repayment Date) is **September 21, 2018**.
- (b) The aggregate amount of the proposed Continued Advance is **\$999,892,928.53**, which is comprised of:
 - i. principal amount of Advance which is to be continued **\$999,892,928.53**; and
 - ii. accrued interest on Advance which will not be paid on or before the Current Repayment Date **\$0.00**;
- (c) The IESO will pay on the Current Repayment Date the following amount with respect to the Advance (if any): **\$0.00**;
- (d) The New Repayment Date, being a Business Day, applicable to such proposed Continued Advance is **October 19, 2018**. [Insert date not earlier than 5 days and not later than 95 days after the current Repayment Date for the Advance.]

IESO confirms it will also be paying interest in the amount of **\$1,528,603.44**.

Such election shall be confirmed by IESO by a telephone call to OFA Cash Management at 416-325-8108.

II. BORROWING NOTICE [to be included if applicable]

The IESO gives you notice pursuant to Section 3.3(3) of the Agreement that the IESO requests a further Advance under the Agreement on the Current Repayment Date, with a Repayment Date of the New Repayment Date as specified above, and in connection with such request, sets forth below the information relating to such Advance (the "Proposed Advance"):

Amount of the Proposed Advance: **\$175,073,329.63**

The total aggregate amount of the proposed Continued Advance and Proposed Advance pursuant to this Notice is: **\$1,174,966,258.16**

Such request of the Proposed Advance shall be confirmed by the IESO by a telephone call to OFA Cash Management at 416-325-8108.

Use of Funds

The IESO hereby certifies that the funds comprising the Proposed Advance requested pursuant to this Notice, if any, will be used for the following purpose(s): **This transaction relates to the Fair Hydro Program.**

The IESO hereby certifies that:

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

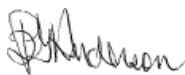
No Event of Default has occurred or is continuing and no event or condition has occurred, which, with the lapse of time or the giving of notice or both would constitute an Event of Default.

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

Any and all funds received under the Agreement are being used solely as authorized under the Agreement and are not being used for any other purpose.

Yours truly,

INDEPENDENT ELECTRICITY SYSTEM OPERATOR



Per: _____

Barb Anderson
VP, Corporate Services & CFO

From: Sarah Harris []
To: Opal Kandelas [Opal.Kandelas@ofina.on.ca]
Subject: FW: Review Draft Guarantee & Procedures Document | OFA, OPCD, MOF, Legal Counsel
Date: Thursday, November 02, 2017 10:44:41
Attachment 1: 23239360-v8-CLPA - Protection Agreement.docx
Attachment 2: 23239361-v6-CLPA - Process Agreement.docx

Hi Opal,

I'm going to be tied up between 12 and 3 on the FHP meeting. Docs are attached.

Sarah

From: Sarah Harris
Sent: Thursday, November 02, 2017 10:43 AM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Review Draft Guarantee & Procedures Document | OFA, OPCD, MOF, Legal Counsel

Thanks, Malle. I will try to attend most of it. I'm tied up with finalizing the IESO Fair Hydro Plan Agreements for execution tomorrow, and we're trying to organize a call today with IESO today. I may need to drop in and out.

Sarah

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, November 02, 2017 10:39 AM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: FW: Review Draft Guarantee & Procedures Document | OFA, OPCD, MOF, Legal Counsel

Hi Sarah, Meeting today from 12 to 3 to review this. Think it would be good if you can attend. Thanks.

From: Whitfield, Tobias P. (MOF)
Sent: November 2, 2017 9:41 AM
To: Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas
Cc: Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
Subject: RE: Review Draft Guarantee & Procedures Document | OFA, OPCD, MOF, Legal Counsel

Please find attached preliminary drafts of the Protection Agreement and the Process Agreement for discussion at our meeting this afternoon.

Note that these drafts contain a number of issues that are still under consideration and up for discussion.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca
Phone: 416-325-1456

-----Original Appointment-----

From: Anna Strathy [<mailto:Anna.Strathy@ofina.on.ca>]

Sent: November 2, 2017 8:31 AM

To: Anna Strathy; Whitfield, Tobias P. (MOF); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); McKinlay, Tom (MAG); Thouin, Alena (ENERGY); 'stephen.ashbourne@blakes.com'; Gavaris, Hresa (OFA); John Psinas

Cc: Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)

Subject: Review Draft Guarantee & Procedures Document | OFA, OPCD, MOF, Legal Counsel

When: November 2, 2017 12:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Executive Boardroom, 14th Floor, 1 Dundas OR Teleconference 1-866-602-5461 or 416-212-8011 | Conference ID: 4717656

Nov 2: Rescheduled from 10:00am to 12:00pm

MOF Legal is expecting a second draft between 9 and 10am today. The later meeting time will allow time to review prior to discussing.

Lunch will be provided

Toll-free dial-in number: 1-866-602-5461

Local dial-in number: 416-212-8011

Conference ID: 4717656

OFA to Moderate

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**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE
MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

AND

**[FINANCING ENTITY TRUSTEE] IN ITS CAPACITY AS TRUSTEE OF THE
[FINANCING ENTITY]**

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER

AND

[NAME OF INDENTURE TRUSTEE], AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

This **AGREEMENT**, among Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the “**Province**”), **[FINANCING ENTITY TRUSTEE]**, as the Financing Entity Trustee and in its capacity as trustee of the **[FINANCING ENTITY]**, a trust settled by the FSM under the laws of the Province of Ontario (the “**Financing Entity**”), Ontario Power Generation Inc. in its capacity as the Financial Services Manager in accordance with the Act (the “**FSM**”) and **[INDENTURE TRUSTEE]**, a trust company existing under the laws of Canada, as Indenture Trustee and in its capacity as trustee for the in accordance with the Trust Indenture, is made and entered into as of [■], 2017.

RECITALS

Pursuant to Subsection 5(3) of the *Ontario Fair Hydro Plan Act, 2017* (the “**Act**”), the Lieutenant Governor in Council may by order, authorize the Minister of Energy and the Minister of Finance, acting together on behalf of the Province, to agree to guarantee or indemnify certain debts, obligations, securities or undertakings associated with an Investment Interest.

Pursuant to an Order in Council dated as of ■ (the “**OIC**”), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations secured or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM [established] the Financing Entity as a “financing entity”¹ (as defined in the Act) for the purposes contemplated in the Act.

The trustee of the Financing Entity in its capacity as Financing Entity Trustee and the Indenture Trustee are parties to the Trust Indenture and propose to create and issue series of notes, bonds and other securities as contemplated therein, and to provide security over the assets and undertaking of the Financing Entity in respect of such notes, bonds and securities, as well as other Obligations Secured.

The Minister of Energy and the Minister of Finance, acting together on behalf of the Province, have determined to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended. This Agreement sets out the terms and conditions of such protections and assurances.

OPG and the Province will concurrently enter into the Process Agreement, under which OPG will agree to perform certain related activities and to provide certain assurances on which the Province will rely, including for the purposes of determining whether the Adherence

¹ Note to Draft: Consideration is being given by MOE to possible changes to the Regulation to accommodate the proposed use of a “trust”, as a “financing entity”.

Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation and ensuring that the Province's assumption right may be exercised without impediment on the terms and conditions contemplated in this Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of the Province, the Financing Entity Trustee, the FSM and the Indenture Trustee, in accordance with the Act, the OIC and the Trust Indenture, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;
- (b) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;
- (c) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;
- (d) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;
- (e) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;
- (f) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

- (g) all references in this Agreement to designated “Articles”, “Sections”, “Subsections”, “Schedules”, “Exhibits” and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;
- (h) “including” and words of similar import will be deemed to be followed by “without limitation”; and
- (i) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.

1.02 Trustee to act in accordance with the Trust Indenture

Any action taken, required to be taken or permitted to be taken by the Indenture Trustee under this Agreement shall only be taken in the manner, at the times, for the purposes, subject to the prerequisites, conditions, requirements and limitations, and with the benefits, exculpations, indemnities and protections that are provided to the Indenture Trustee, in each case in respect of such action taken, required to be taken or permitted to be taken by it under the Trust Indenture.

1.03 Proof of Approved Obligations

The efficacy of any agreement, instrument or writing evidencing a Primary Obligation may, in the absence of manifest error, be conclusively proved in any manner that the Indenture Trustee deems to be sufficient.

Any statement of account prepared by the Indenture Trustee as regards the Primary Obligations shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and the Province hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Indenture Trustee agrees to provide the Province with the computations and calculations used by the Indenture Trustee to prepare each such statement of account promptly following a request therefor.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised through the Indenture Trustee under, in accordance with and subject to the limitations set forth in the Trust Indenture. No Specified Creditor will have any right to institute any proceeding, judicial or otherwise, with respect to this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province upon performance by the Province of the Primary Obligation.

1.06 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.07 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not. All covenants and agreements of the Indenture Trustee or the FSM in this Agreement shall bind their respective successors, co-trustees and agents.

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

1.09 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.10 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

1.11 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.12 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.13 Change of Law Protection Agreement Referred to in the Trust Indenture

This Agreement is the “Change of Law Protection Agreement” referred to in the Trust Indenture.

1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party’s failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

1.16 Interest Act

For the purpose of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year in which such

yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis. The parties further agree that for the purposes of the *Interest Act* (Canada), (a) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (b) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

1.17 Currency

Unless stated otherwise, all amounts herein are stated in Canadian Dollars.

1.18 References to Acts of the Financing Entity Trustee

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

1.19 Judgment Currency

- (a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the “**Original Currency**”) into another currency (the “**Second Currency**”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Financing Entity shall indemnify the Indenture Trustee against such loss.

- (b) The term “rate of exchange” in this Section 1.18 means the spot rate at which the Indenture Trustee, in accordance with normal practice, is able on the relevant date to purchase the Original Currency with the Second Currency and includes any premium and costs of exchange payable in connection with such purchase.

ARTICLE II

AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

- (a) Upon the occurrence of a Protection Event, the Indenture Trustee may provide a written demand, in the form attached as Exhibit A (a “**Payment Demand**”) to the Province requiring the Province to pay the Approved Obligations owing from time to time by the Financing Entity to the Indenture Trustee as and when they become due and payable, without Acceleration. A Payment Demand will not be valid with respect to an Approved Obligation until the amount claimed becomes due and payable in respect of the Approved Obligation (without Acceleration) in accordance with the Trust Indenture and has not otherwise been paid by the Financing Entity.
- (b) Following receipt of a valid Payment Demand under Subsection 2.01(a), the Province shall pay the amounts owing by the Financing Entity to the Indenture Trustee, on behalf of the applicable Beneficiaries, in respect of each Approved Obligation², in each case as and when the Approved Obligation becomes due and payable in accordance with its terms and on its scheduled, specified or determined payment date, as determined without regard to any Acceleration or rights of Acceleration arising under the Approved Obligation, in each case by the Province depositing or causing the deposit of the applicable payment amount into the Collection Account (the “**Limited Guarantee**”). For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation, including (i) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event, and [(ii) amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account or a Supplemental Reserve Account.]³

² Note: Under Subsection 5(3) of the Act, the Province can guarantee only obligations “associated with an investment interest”. The guarantee in Section 2.01 of the draft agreement guarantees “Approved Obligations” which in turn relies on the definition of Primary Obligations. The connection between a Primary Obligation and an “investment interest” is therefore crucial. Unfortunately, the nexus is not straightforward. Blakes is considering how to more precisely connect these concepts.

³ Note: OFA to confirm whether the Limited Guarantee will extend to require the Province to fill sinking fund and collateral accounts during the period when the Province is required to make payments. If not, then we will need to consider the impact on ratepayers and the potential impact on the CEA calculations, which will have been based originally on these deposits being made during particular reference periods.

- (c) Except as expressly provided in this Agreement, the Province's obligation to provide and perform the Limited Guarantee shall be irrevocable, absolute and unconditional.
- (d) Any amount payable by the Province under the Limited Guarantee in respect of an Approved Obligation that is not paid when required herein shall bear interest from the applicable due date until paid in full at the rate or rates expressed to be payable on the Approved Obligation.
- (e) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.

2.02 Gross-up

[All amounts payable by the Province under this Agreement shall be made free and clear of and without deduction for or on account of any present or future taxes, charges, fees, levies, duties or withholdings of any kind. If the Province is obliged to deduct or withhold an amount in respect of any such taxes, charges, fees, levies, duties or withholdings, then in such event the Province shall deposit into the Collection Account such additional amount as is necessary to ensure that the Indenture Trustee receives (on an after-tax basis, after payment of any and all income taxes on such additional amounts) an amount equal to the full amount otherwise due and payable in respect of the related Approved Obligation, net of any such taxes, charges, fees, levies, duties or withholdings.]⁴

2.03 Absence of Set-off

The Province acknowledges and agrees that each payment to be made by the Province hereunder in respect of an Approved Obligation shall be made as required in whole, without application of any right of set-off and without regard to any equities as between or among any of the Province, the Beneficiaries and/or the Indenture Trustee.

2.04 Payment into Collection Account in Satisfaction

Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Indenture Trustee shall apply the full amount paid by the Province into the Collection Account in respect of an Approved Obligation to pay the corresponding amount due and payable to the applicable Beneficiaries under the Approved Obligation.⁵ Upon a payment having been made by or on behalf of the Province into

⁴ Province to advise on extension of a tax gross up. We assume this is necessary, although we have not discussed it specifically and it may be that we delete this provision on the basis that the determination of a tax gross up (and the Province's liability for it) will be based on the inclusion of that concept in the Trust Indenture itself.

⁵ Note: This will need to operate in tandem with the Trust Indenture waterfall. The idea is that the Approved Obligations may not necessarily follow the sequence of the "payment waterfall" included in the Trust Indenture, and so amounts from the Province would need to operate independently. To be discussed with Torys.

the Collection Account in respect of an Approved Obligation, the amount so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries and thereby reduce the amount due and payable under the Approved Obligation, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid⁶.

2.05 Certain Waivers

The Province hereby waives:

- (a) any requirement, and any right to require, that any power be exercised or any action be taken against the Financing Entity or any Collateral for any of the Approved Obligations;
- (b) all notices which may be required by applicable law to preserve any rights against the Province hereunder, including any notice of default, demand, dishonour, presentment and protest;
- (c) diligence; and
- (d) any defence based upon, arising out of or in any way related to any claim that any election of remedies by the Beneficiaries impaired, reduced, released or extinguished any rights that the Province might otherwise have had against the Financing Entity or any other surety.

The Province agrees that each such waiver is made with full knowledge of its significance and consequences and if any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the maximum extent permitted by applicable law.

2.06 Additional Security

This Agreement shall be in addition to and without prejudice to any other security by whomsoever given, held at any time by the Indenture Trustee or for the benefit of any of the Beneficiaries.

2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the

⁶ Note: Consider if Beneficiary rights under Obligations Secured can in fact be affected in this way under an agreement to which a Beneficiary is not directly a party. To achieve a binding relationship, a corresponding provision should appear in the Trust Indenture, to the effect that the Beneficiaries will be deemed to be bound by the Indenture Trustee insofar as the Beneficiaries rights against the financing entity are to be affected.

Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations.

2.09 Modifications of Approved Obligations

The Province expressly authorizes the Indenture Trustee, at any time and from time to time, without notice and without affecting the liability of the Province hereunder, but subject to compliance with the requirements of the Program Agreements and this Agreement, to:

- (a) accept new, additional or replacement instruments, documents, agreements or security in connection with all or any part of the Approved Obligations;
- (b) accept partial payments on the Approved Obligations; and
- (c) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Approved Obligations and any security or guarantee therefor, and apply any such security and direct the order or manner of sale thereof as the Indenture Trustee (for the benefit of the Beneficiaries) in its discretion may determine,

provided, however, that the Indenture Trustee shall not permit any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor except with the prior written consent of the Province having first been obtained.

ARTICLE III THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

3.02 Acceptance of Trusts

The Indenture Trustee hereby accepts the trusts hereof and agrees to carry out and discharge the same unless and until a new trustee shall be appointed as contemplated in Section 3.01.

ARTICLE IV APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (a) the Adherence Conditions applicable thereto have been satisfied; or (b) the Province has specifically approved in writing the particular terms, conditions and documentation for the Primary Obligation.

4.02 Adherence Conditions

The following shall be the Adherence Conditions applicable in relation to a Primary Obligation:

- (a) the Primary Obligation is contemplated under the Trust Indenture as an Obligation Secured;
- (b) if the Primary Obligation is a [borrowing]⁷, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments⁸ under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations,⁹ do not exceed the Protection Agreement Maximum;
- (c) the FSM delivers a notice to the Indenture Trustee, with a copy to the Province, not less than ■ Business Days and not more than ■ Business Days prior to the incurrence or any amendment of the Primary Obligation, setting out the Protection Agreement Maximum;
- (d) the FSM delivers a certificate signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are executive officers of OPG) and addressed to the Province and the Indenture Trustee, not less than ■ Business Days and not more than ■ Business Days prior

⁷ Under consideration. Need to ensure that non-conventional instruments (capital rather than debt) are caught in the maximum test.

⁸ Note: The concept of “repayments” under the OFHPA take account of contemplated refinancings. There is some risk that an anticipated refinancing would not manifest as contemplated, in which case the amount financed (and subject to the Limited Guarantee) could exceed the Protection Agreement Maximum and result in a balloon payment obligation.

⁹ Note: If certain financing entity obligations are guaranteed under a one-off agreement, the interaction between the one-off guaranteed amount and Approved Obligations that are looked at to determine if incurrence of a new Primary Obligation is within the Protection Agreement Maximum will need to be considered.

to the incurrence or any amendment of the Primary Obligation, setting out the following with respect to the Primary Obligation:

- i. if the Primary Obligation is a [borrowing], confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum; and
 - ii. confirmation that the FSM has delivered to the Province a certificate in accordance with the Process Agreement confirming, among other things, that the transaction documents in respect of the Primary Obligation are in substantially the form of the documentation reviewed by the Province; and
- (e) the Province has not provided notice to the Indenture Trustee that a Breach Event has occurred and that the Limited Guarantee does not apply to any further Primary Obligations that are incurred.¹⁰

4.03 Evidence of Satisfaction

A closing certificate signed by at least two executive officers of OPG in connection with an incurrence or amendment of a Primary Obligation shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defect or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same.

ARTICLE V RIGHTS OF THE PROVINCE

5.01 Assignment and Subrogation

Upon paying an amount in respect of an Approved Obligation

- (a) to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee; or
- (b) as a result of assuming the Financing Entity's obligations in respect of all Obligations Secured under Article VI,

the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (a) the right and entitlement to be paid and receive distributions of such amount by the Financing Entity in accordance with and in the priority applicable to the Approved

¹⁰ NTD: Carve-out for re-financings of Approved Obligations already in existence is under consideration.

Obligation applicable in respect of the payment under the Trust Indenture, (b) the benefits of the related Collateral and (c) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a secured party under the Trust Indenture) under such Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including, if applicable, as a Noteholder) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary for whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture.

5.03 Voting Rights under “Outstanding Notes”

Notwithstanding the last three sentences of the definition of “Outstanding” in the Trust Indenture¹¹:

- (a) Notes in connection with Approved Obligations in respect of which the Province has rights and interest pursuant to Section 5.01 shall be regarded as “Outstanding” within the meaning of the Trust Indenture; and
- (b) in determining whether Noteholders of the requisite principal amount of Notes that are Outstanding (as defined in the Trust Indenture) have taken any Action under the Trust Indenture, and for the purposes of Article X of the Trust Indenture, the Province shall be deemed to have the amount of Outstanding (as defined in the Trust Indenture) Notes in proportion to its interest in such Notes based on the amounts that the Province has paid in respect of Approved Obligations under this Agreement.

¹¹ Note: This concept should be reflected in the Trust Indenture to be effective. Additional scenarios where the Province’s rights as an affiliate of OPG may differ from what is expected are to be identified in the underlying Program Agreements.

5.04 Province May Perform Other Program Agreement Covenants.

If the Financing Entity fails to perform any covenant under any Program Agreement, the Province may (but, except as expressly provided for under this Agreement, shall not be obligated to) perform such covenant on behalf of the Financing Entity. If the Province performs such a covenant on behalf of the Financing Entity, all sums expended or advanced by the Province in so performing the covenant will bear interest at the rate of interest determined by the Province to reflect market terms and conditions for a borrowing made by the Province at the relevant time from the date of expenditure until repayment by the Financing Entity [and will (together with such interest) be paid by the Financing Entity upon demand and will until paid form part of the Obligations Secured and constitute a Finance Amount.¹²

ARTICLE VII NOTICE OF ASSUMPTION OF OBLIGATIONS SECURED

6.01 Delivery of Assumption Notice

The Province may provide notice (in the form of Exhibit B) to the Indenture Trustee that, in accordance with the terms of the Process Agreement, the Province has elected to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor (the "**Assumption Notice**"). The Assumption Notice shall specify the date on which the assignment and assumption of the Obligations Secured will be effective (the "**Assumption Closing Date**").

6.02 Cooperation to Implement the Assignment and Assumption

The Indenture Trustee, the FSM, the Financing Entity and the Province will cooperate and use [commercially reasonable efforts] to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the Assumption Closing Date.¹³

6.03 Effect of Assumption

On the date that the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province becomes effective (the "**Assumption Effective Date**"), the Province shall no longer be required to provide and perform the Limited Guarantee.

6.04 Interim Period

Until the effective time of the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province on the Assumption Effective Date, the Province shall continue to perform and be obligated under the Limited Guarantee.

¹² Note: General Regulation must be revised such that "Finance Amount" picks up guarantor amounts. Under consideration by MOE.

¹³ Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

ARTICLE VII INDENTURE TRUSTEE MATTERS

7.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

7.02 Not Responsible for Recitals or Issuance of Notes

The recitals contained herein will be taken as the statements of the Province and the FSM, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Agreement.

7.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

- (a) the Indenture Trustee is a trust company organized, existing and in good standing under the laws of Canada;
- (b) the Indenture Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement and other documents to which it is a party;
- (c) each of this Agreement and the other documents to which it is a party has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and
- (d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada.

7.04 Release of all Collateral

- (a) The Indenture Trustee shall not execute instruments to release Collateral from the Security Interest of the Trust Indenture, or convey the Indenture Trustee's interest (which is held by the Indenture Trustee for the benefit of the Specified Creditors) in the same, unless and until the rights and interests of the Province under Section 5.01 or otherwise as an assignee of any of the Obligations Secured or as a

subrogee have been satisfied in full and the Province has no continuing obligations under this Agreement.

- (b) The Province shall be entitled to receive at least 10 Business Days' written notice when the Indenture Trustee proposes to take any action pursuant to Subsection 7.04(a), accompanied by copies of any instruments involved.

7.05 Right to Notice and Attend Meetings

The Financing Entity shall ensure that the Province receives advance notice of any meeting or proposed written resolution of Specified Creditors (or any of them) and the Province and its legal advisers shall be permitted to attend and be represented at any meeting of such Specified Creditors.

ARTICLE VIII SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

8.01 Suspension Notice

A written notice in the form of Exhibit C (a “**Suspension Notice**”):

- (a) shall be provided by the FSM to the Province and the Indenture Trustee promptly following the occurrence of a Program Breach; and
- (b) may be provided by the Province to the Indenture Trustee, the FSM and the Financing Entity following the occurrence of a Breach Event.

8.02 Suspension

If a Suspension Notice has been provided under Section 8.01 (the provision of such notice being a “**Suspension Event**”), the Financing Entity shall not incur any new or additional Obligation Secured and shall not amend or terminate any existing Obligation Secured except with the prior written consent of the Province.

8.03 Termination Notice

On the occurrence of a Suspension Event, the Province may provide to the Indenture Trustee, the FSM and the Financing Entity a notice in the form of Exhibit D (a “**Termination Notice**”).

8.04 No Impact on Adherence

For greater certainty, the occurrence of Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event.

ARTICLE IX MISCELLANEOUS

9.01 Term of Agreement

This Agreement will continue until the later of:

- (a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee; and
- (b) the date that a Termination Notice is received by the Indenture Trustee, the FSM and the Financing Entity.

9.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

- (a) if to the Financing Entity:

[Financing Entity]
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]
Email: [■]

with copies to:

[Financing Entity Trustee], in its capacity as Financing Entity Trustee for
[Financing Entity]
[Address]
Attention: [■]

Fax: (416) [■]

Email: [■]

[■]

- (b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: [■]

Fax: (416) [■]

Email: [■]

- (c) if to the Province:

Ministry of Finance

[Address]

Attention: [■]

Fax: (416) [■]

Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]

Fax: (416) [■]

Email: [■]

- (d) if to the Indenture Trustee:

[Address]

Attention: [■]

Fax: (416) [■]

Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 9.02.

9.03 Assignment

- (a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.
- (b) Any purported assignment of this Agreement in violation of this Section 9.03 shall be null and void.

9.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

9.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

9.06 Confidentiality

[Note: To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province. Note that this Agreement will become part of the package of rights acquired by investors and counterparties and so it is unclear to what extent confidentiality can or should be preserved in these circumstances.]

9.07 No Petition

The Province agrees, to the fullest extent permitted by applicable law, that at no time until one year and one day following repayment in full of all Primary Obligations shall it commence, or join in commencing, a bankruptcy case or other insolvency or similar proceeding under the laws of any jurisdiction against the Financing Entity.

9.08 Force Majeure

In no event shall the Indenture Trustee or the Financing Entity Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Indenture Trustee and the Financing Entity Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

9.09 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO, AS REPRESENTED BY THE
MINISTER OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO, AS REPRESENTED BY THE
MINISTER OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION INC., AS
FSM**

By: _____
Name:
Title:

By: _____
Name:
Title:

**[FINANCING ENTITY TRUSTEE], IN ITS
CAPACITY AS FINANCING ENTITY
TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE
TRUSTEE AND NOT IN ITS INDIVIDUAL
CAPACITY**

By: _____
Name:
Title:

SCHEDULE A

DEFINED TERMS

“Acceleration” has the meaning ascribed to the term “acceleration”¹⁴ in the General Regulation.

“Act” has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

“Action” has the meaning ascribed thereto under the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

“Adherence Conditions”, in respect of a Primary Obligation, means the conditions set out in Section 4.02.

“Approved Obligation” means a Primary Obligation that constitutes an Approved Obligation pursuant to Section 4.01.

“Assumption Closing Date” has the meaning ascribed thereto in Section 6.01.

“Assumption Effective Date” has the meaning ascribed thereto in Section 6.03.

“Assumption Notice” has the meaning ascribed thereto in Section 6.01.

“Beneficiaries” means the Specified Creditors to whom the Financing Entity owes a payment obligation pursuant to one or more Approved Obligations from time to time.

“Breach Event” means the occurrence or existence of any one or more of the following: (a) a default in the performance, or breach, of any covenants of OPG under the Process Agreement; or (b) any representation or warranty made by OPG, or any certification made by OPG under the Process Agreement, proves to be incorrect in any material respect on the date made; or (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

“Business Day” means (a) any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are [, or the office of the Indenture Trustee is,] authorized or obligated by applicable law, regulation or executive order to be closed.

“Capital Account” has the meaning ascribed to the term “capital account” in the General Regulation.

“Change of Law Protection Agreement” means this Agreement.

¹⁴ Note: A proposal to add this concept into the Regulation is under consideration by MOE. Further modifications to follow, depending on that process.

“Collateral” has the meaning ascribed thereto in the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

“Collection Account” has the meaning ascribed thereto in the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

“Declaration of Trust” means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

“Derivative Agreement” means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

“Finance Amount” has the meaning ascribed to the term “finance amount” in the Act as of the date of this Agreement.

“Finance Reserve Account” has the meaning ascribed to the term “finance reserve account” in the General Regulation [as of the date of this Agreement].

“Financing Entity” has the meaning ascribed thereto in the first paragraph of this Agreement.

“Financing Entity Trustee” means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

“FSM” has the meaning ascribed thereto in the first paragraph of this Agreement.

“Funding Obligation” has the meaning ascribed to the term “funding obligation” in the Act [as of the date of this Agreement].

“General Regulation” means O. Reg. 206/17 made under the Act.

“Governmental Authority” means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

“IESO” has the meaning ascribed thereto in the Act [as of the date of this Agreement].

“Indenture Trustee” means the Person named as the Indenture Trustee in the first paragraph of this Agreement until a successor Indenture Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and this Agreement, and thereafter “Indenture Trustee” means and includes such Person.

“Investment Interest” has the meaning ascribed to the term “Investment Interest” in the Act [as of the date of this Agreement].

“Legislature” means the Legislature of the Province of Ontario.

“Limited Guarantee” has the meaning ascribed thereto in Section 2.01(b).

“Master Transfer and Servicing Agreement” means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

“Note” or **“Notes”** has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“Noteholder” has the meaning ascribed thereto under the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“Obligations Secured” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“OIC” has the meaning ascribed thereto in the second paragraph of the recitals in this Agreement.

“OPG” means Ontario Power Generation Inc., a corporation established under the laws of the Province of Ontario.

“Original Currency” has the meaning ascribed thereto in Section 1.18(a).

“Payment Demand” has the meaning ascribed thereto in Section 2.01(a).

“Person” means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

“Primary Obligations” means any Obligation Secured that is a Funding Obligation, other than (a) any amounts that are or become payable as a result of the exercise of an option of the Financing Entity following a Protection Event; and [(b) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account, Finance Reserve Account, or Supplemental Reserve Account.]¹⁵

“Process Agreement” means the Change of Law Process Agreement dated [■], 2017 between the Province and OPG.

¹⁵ Note: Possible simplification of definition structure under consideration.

“Program Agreements” has the meaning ascribed thereto in the Trust Indenture [as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee].

“Program Breach” means an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

“Protection Agreement Maximum” means the dollar amount determined by the Province and of which OPG is provided notice in accordance with the Process Agreement.¹⁶

“Protection Event” means the occurrence of any of the following events:

- (a) (i) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof;
- (ii) the Legislature enacts or amends any other statute;
- (iii) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof; or
- (iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any “regulation” (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;
- (v) there is a change in the organization or structure of the IESO or Ontario’s electricity market¹⁷ undertaken at the initiative of the Province or an entity controlled by the Province,

in each case, that materially and adversely affects (a) the ability of the Financing Entity to receive amounts on its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise, other than if the Indenture Trustee has confirmed in writing that the effect under such agreements is otherwise acceptable; or

- (b) a court of competent jurisdiction [in a final and non-appealable judgement]¹⁸ determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and

¹⁶ Note: An alternative would be to expressly state the Program Agreement Maximum amount and the process by which this amount is determined in this Agreement.

¹⁷ Note: Consider more clarity to “Ontario’s electricity market”.

¹⁸ Under consideration to assess the marketability implications of this phrase.

adversely affects the ability of the Financing Entity to receive amounts on its Investment Interest so that it can pay Obligations Secured.

“Province” has the meaning ascribed thereto in the first paragraph of this Agreement.

“Repayment” has the meaning ascribed thereto in the General Regulation.

“Second Currency” has the meaning ascribed thereto in Section 1.18(b).

“Security Interest” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“Specified Creditors” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“Supplemental Reserve Account” has the meaning ascribed in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“Suspension Event” has the meaning ascribed thereto in Section 8.02.

“Suspension Notice” has the meaning ascribed thereto in Section 8.01.

“Termination Notice” has the meaning ascribed thereto in Section 8.03.

“this Agreement” means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

“Trust Indenture” means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

EXHIBIT A
FORM OF PAYMENT DEMAND

EXHIBIT B
ASSUMPTION NOTICE

EXHIBIT C
SUSPENSION NOTICE

EXHIBIT D
TERMINATION NOTICE

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE
MINISTER OF ENERGY AND THE MINISTER OF FINANCE**

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the “**Province**”), and Ontario Power Generation Inc. (“**OPG**”), is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the “**Act**”).

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the “**FSM**”), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of ■, 2017, the FSM [established] the Financing Entity as a “financing entity” (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the Adherence Conditions at the time the Approved Obligation is incurred or amended.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the Adherence Conditions have been satisfied in connection with the incurrence or amendment of an Approved Obligation, maintaining information related to the Program Agreement and the Approved Obligations, and ensuring that the Province’s assumption rights pursuant to Article VI of the Change of Law Protection Agreement may be exercised without impediment on the terms and conditions contemplated in this Agreement and the Change of Law Protection Agreement.

All things necessary to make this Agreement a valid and legally binding agreement of OPG, and of the Province in accordance with the Act and the OIC, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;
- (b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;
- (c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;
- (d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;
- (e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;
- (f) the word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is not exclusive;
- (g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;
- (h) all references in this Agreement to designated "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, Subsection, Schedule, Exhibit or other subdivision;

- (i) “including” and words of similar import will be deemed to be followed by “without limitation”; and
- (j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.

1.02 References to the Financing Entity or the Financing Entity Trustee

For greater certainty, each reference to the Financing Entity or to the Financing Entity Trustee shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT.

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.01 Change of Law Process Agreement Referred to in the Change of Law Protection Agreement

This Agreement is the “Change of Law Process Agreement” referred to in the Change of Law Protection Agreement.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party’s failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II COVENANTS OF OPG

2.01 Deliveries to the Province

- (a) Not less than ■ Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province a copy of

the initial Financing Plan. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

- (b) Not less than ■ Business Days prior to the initial issuance of any Funding Obligation by the Financing Entity, OPG shall deliver to the Province an analysis and assessment of the tax position of the Financing Entity. Thereafter, OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of such analysis and assessment.
- (c) Not less than ■ Business Days prior to any proposed change, addition or supplement to a Transaction Document becoming effective or otherwise being used, OPG shall deliver to the Province a copy of such proposed change, addition or supplement to the Transaction Document.
- (d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document).
- (e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.
- (f) OPG shall, as the FSM, cause the Financing Entity to deliver to the Province copies of the Financing Entity's annual tax returns and any related tax assessment not more than ■ Business Days after such a tax return or tax assessment is required to be filed under applicable law.¹

2.02 Covenants

- (a) OPG shall, as the FSM, cause the Financing Entity to:
 - (i) punctually perform and observe all of its obligations and agreements contained in the Program Agreements;
 - (ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;
 - (iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

¹ Note: The tax documents to be provided to the Province are under consideration.

- (iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and
- (v) not, without the prior written consent of the Province:
 - (A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement or replacement or waiver or consent could reasonably be considered to be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement;
 - (B) consent to the resignation of (1) the Administrative Agent under the Administrative Services Agreement; or (2) the Manager under the Management Agreement;
 - (C) consolidate or merge with or into any other Person;
 - (D) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired;
 - (E) permit any Lien (other than the Security Interest) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof;
 - (F) sell, transfer, exchange or otherwise dispose of any of the Collateral, other than as expressly permitted by the Trust Indenture;
 - (G) release any security or guarantee in respect of the Collateral other than as expressly permitted by the Trust Indenture; or
 - (H) voluntarily dissolve or liquidate.
- (b) OPG shall:
 - (i) comply, and as the FSM cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;
 - (ii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;
 - (iii) after the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension

right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under this Agreement would be accelerated, delayed or otherwise affected; and

- (iv) ensure that any disclosure (including any Disclosure Document) that refers to or describes the terms, effect or adherence of or to this Agreement will be subject to the prior review of the Province and such disclosure will not be made (and any such Disclosure Document shall not be used) without the prior written consent of the Province.

ARTICLE III PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the “**Process Certificate**”), signed by the Chief Financial Officer and the Treasurer of OPG (or their respective designees, provided that such designees are also executive officers of OPG) and addressed to the Province, not less than ■ Business Days prior to the incurrence or any amendment of a Primary Obligation, setting out the following with respect to the Primary Obligation:

- (a) the material terms of the Funding Obligations pertaining to principal amount, pricing and third party fees;²
- (b) if an existing Primary Obligation is proposed to be amended, material details respecting such amendment and the anticipated effect of the amendment on or in relation to the affected terms and conditions of the Primary Obligation, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;
- (c) a statement that: (i) the Primary Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reviewed Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm’s length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation;

² Note: Level of detail required by the Province is under consideration. Province to consider whether it would like further details regarding Principal Obligations, Redemption Obligations, Interest Obligations, Hedging Obligations, Third Party Expense Obligations or Other Funding Obligations. In desirable, particulars regarding Hedging Obligations and the market in which notes are issued to be considered.

- (d) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and
- (e) if the Primary Obligation is a [borrowing], confirmation that, at the time the Primary Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Primary Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under Approved Obligations, do not and will not exceed the Protection Agreement Maximum.

3.02 Acknowledgment

The parties acknowledge that the Process Certificate is the certificate referred to in Subsection 4.02(d)(ii) of the Change of Law Protection Agreement.

3.03 Meaning of “Reviewed Documentation”

For the purposes of Subsection 3.01(c), the term “Reviewed Documentation” shall mean each Transaction Document (including any change, addition or supplement thereto) that, at the relevant time:

- (a) has been provided to the Province in accordance with Subsection 2.01(c); and
- (b) has been accepted by the Province, as confirmed by way of a written notice of acceptance from the Province delivered to OPG.

3.04 Meaning of “Substantially in the Form”

For the purposes of Subsection 3.01(c), the term “Substantially in the Form” shall mean:

- (a) with respect to the Reviewed Documentation referred to in clauses (i) to (xi) of the definition of “Transaction Documents”, that there are no differences between the proposed documents and such Reviewed Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province’s rights of subrogation or assignment (including pursuant to Section 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation;
- (b) with respect to the Reviewed Documentation referred to in clauses (v) to (ix) of the definition of “Transaction Documents”, and, where applicable, clauses (x) and (xi) of the definition of “Transaction Documents” as the context requires, that the variable terms to be set forth in the proposed documents are as reasonably contemplated in the Reviewed Documentation, as to the type, scope and extent of

the Primary Obligations arising thereunder and as to the timing, conditions and circumstances in which payment obligations under such Primary Obligations may arise, but without regard to the particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reviewed Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

- (c) with respect to the Reviewed Documentation referred to in clause (xii) of the definition of “Transaction Documents”, that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed disclosure document complies in all material respects with all securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

- (a) The initial Protection Agreement Maximum shall be determined by the Province prior to the initial issuance of the first Funding Obligation. The initial Protection Agreement Maximum will be confirmed by the Province by notice in writing to OPG, as the FSM.
- (b) Not less than ■ Business Days prior to the proposed incurrence of the first Funding Obligation, OPG shall, as the FSM, deliver to the Province a forecast setting out OPG’s expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the next following 24 month period (the “**Initial Forecast Period**”), which expectations shall be consistent with the applicable Financing Plan (the “**Initial Forecast**”). In determining the initial Protection Agreement Maximum, the Province may have regard to (but not be bound by) the Initial Forecast.
- (c) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG’s expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a “**Forecast**”).

- (d) Upon receiving an updated Forecast, the Province shall determine whether or not the Protection Agreement Maximum will be revised. In determining whether the Protection Agreement Maximum will be revised, the Province may have regard to (but not be bound by) such updated Forecast. Any determination by the Province to revise the Protection Agreement Maximum will be confirmed by setting out a new Protection Agreement Maximum in a written notice from the Province to the FSM and the Indenture Trustee, the delivery of which will be conclusive evidence that such new Protection Agreement Maximum will apply until it may be further so revised.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

- (a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, shall cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.
- (b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto and to own its property and carry on its business as currently conducted.
- (c) OPG has been validly appointed, and has irremovably accepted such appointment, as the FSM in accordance with the Act. OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.
- (d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation of OPG enforceable against OPG in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.
- (e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG (including in its capacity as the FSM) or the

Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or the Financing Entity or in the ability of OPG or the Financing Entity to perform their respective obligations under the Program Agreements.

- (f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or the Program Agreements.
- (g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.
- (h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.
- (i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

ARTICLE VI

ELECTION TO ASSUME APPROVED OBLIGATIONS

6.01 Election by the Province

At any time following the occurrence of a Protection Event, the Province may (but shall not be obligated) to elect to assume the Financing Entity's obligations in respect of all Obligations Secured, as obligor and debtor. To make such election, the Province shall duly

complete and deliver to OPG a notice in the form of Exhibit A (an “**Election Notice**”), which in turn will set forth the form of agreement (an “**Assumption Agreement**”) setting forth the material terms and conditions under which the Province would assume and become obligated under each of the Obligations Secured. The Election Notice shall, among other things, specify the date on which the Province proposes to assume the Obligations Secured, which date shall be no earlier than 20 Business Days following delivery of the Election Notice to OPG (the “**Proposed Assumption Date**”).

6.02 Details regarding Obligations Secured

Promptly following the delivery of the Election Notice to OPG, OPG shall provide the following information and documentation to the Province:

- (a) a summary of the amounts that will be owing under all Obligations Secured as of the Proposed Assumption Date, together with a detailed schedule setting out the dates on which such amounts will become due and payable under the Obligations Secured;
- (b) a summary of the rights arising under the Obligations Secured that permit the Financing Entity to assign the Obligations Secured to the Province, including details regarding any conditions precedent to such assignment and the related assumption becoming effective and any notices, filings, consents or other actions that will be required in order to implement and effect such assignment and assumption;
- (c) current versions of all documentation under which the Obligations Secured arise;
- (d) copies of all correspondence exchanged between OPG, as the FSM, or the Financing Entity, on the one hand, and any Specified Creditor, Rating Agency or the Indenture Trustee, on the other hand, in each case that may reasonably be considered to be material to the assumption and performance of the Obligations Secured by the Province;
- (e) all income tax returns and assessments, financial statements and notices of proceedings of or pertaining to the Financing Entity or its business and any documentation related thereto, including any pleadings, appeals, objections, qualifications or other similar materials in respect of the Financing Entity or any Program Agreement; and
- (f) a draft version of the Assumption Agreement prepared in relation to each Obligation Secured, prepared in accordance with and having regard to the requirements of the relevant agreement(s) under which the Obligation Secured arises.

6.03 Settlement of Terms

Within ■ Business Days following receipt by the Province of the information and documentation to be provided under Section 6.02, the Province shall confirm in writing whether

or not it will proceed with the assignment and assumption of the Obligations Secured and, if it will be proceeding with the assignment and assumption, the date on which the Province intends that assignment and assumption will be effected, which may not be earlier than the Proposed Assumption Date. If it will be proceeding with such assignment and assumption, the Province will deliver an Assumption Notice as contemplated under Section 6.01 of the Change of Law Protection Agreement, which will specify such date as the “Assumption Closing Date” for the purposes thereof.

6.04 Cooperation to Implement the Assignment and Assumption

OPG shall cooperate with the Province and, as FSM, will cause the Financing Entity to cooperate to complete the assignment and assumption of the Obligations Secured by and from the Financing Entity to and by the Province, by the applicable Assumption Closing Date.³

6.05 Terms of Obligations Secured

In order to permit the Province to assume the Obligations Secured in the circumstances contemplated herein, OPG will, and as FSM, will cause the Financing Entity to, ensure that all Obligations Secured permit such an assignment to and assumption by the Province substantially in accordance with the terms and on the basis contemplated in the Assumption Agreement, without any penalty or make-whole payment, or any requirement for further consent, approval or agreement, or alternatively, in the case of any Obligations Secured entered into by or on behalf of the Financing Entity for the provision of on-going services to the Financing Entity, permitting the satisfaction and termination of such Obligations Secured on or prior to the effective time of such assumption without any acceleration of future fees, profits or other like amounts.⁴

ARTICLE VII BREACH EVENTS

7.01 Breach Events

“**Breach Event**” shall mean the occurrence or existence of any one or more of the following:

- (a) a default in the performance, or breach, of any covenants of OPG under this Agreement (including in respect of its role as FSM under any Program Agreement;
- (b) any representation or warrant made by OPG in this Agreement, or any certification made in a Process Certificate, proves to be incorrect on the date made; or

³ Note: Further details regarding obtaining of third party consents and rating agency approvals to be considered.

⁴ Note: The Trust Indenture will need to include a clause providing that the obligations of the Financing Entity to the Indenture Trustee and the Noteholders may be assigned to the Province in accordance with an assumption agreement, substantially in the form set out in an exhibit to the Trust Indenture.

- (c) OPG is no longer the FSM, the Administrative Agent or the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the FSM, the Administrative Agent or the Manager.

7.02 Notice on Breach Event

If any Breach Event shall have occurred and not been waived in writing by the Province, the Province shall have the right, upon written notice to OPG at its option, and in addition to and not in substitution for any other remedies available hereunder at law or equity, to provide notice to the Indenture Trustee that a Breach Event has occurred and, in accordance with the Change of Law Protection Agreement, that the Limited Guarantee does not and will not apply to any Primary Obligations that may thereafter be incurred or amended by or on behalf of the Financing Entity.⁵

ARTICLE VIII MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

8.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

- (a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: [■]
Fax: (416) [■]

⁵ NTD: Carve-out for re-financings of Approved Obligations already in existence is under consideration.

Email: [■]

- (b) if to the Province:

Ministry of Finance

[Address]

Attention: [■]

Fax: (416) [■]

Email: [■]

and

Ministry of Energy

[Address]

Attention: [■]

Fax: (416) [■]

Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 8.02.

8.03 Assignment

- (a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.
- (b) Any purported assignment of this Agreement in violation of this Section 8.03 shall be null and void.

8.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

8.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

8.06 Confidentiality

[Note: To be considered based on what would be customary and appropriate for similar types of arrangements and would be acceptable to the Province.]

8.07 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO, AS
REPRESENTED BY THE MINISTER
OF FINANCE**

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO, AS
REPRESENTED BY THE MINISTER
OF ENERGY**

By: _____
Name:
Title:

**ONTARIO POWER GENERATION
INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

**[FINANCING ENTITY TRUSTEE], IN ITS
CAPACITY AS FINANCING ENTITY
TRUSTEE FOR [FINANCING ENTITY]**

By: _____
Name:
Title:

**[INDENTURE TRUSTEE], AS INDENTURE
TRUSTEE AND NOT IN ITS INDIVIDUAL
CAPACITY**

By: _____
Name:
Title:

SCHEDULE A

DEFINED TERMS

“**Act**” has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

“**Adherence Conditions**” has the meaning ascribed thereto in the Change of Law Protection Agreement.

[“**Administrative Agent**” means OPG, in its capacity as administrative agent of the Financing Entity under the Administrative Services Agreement.]

[“**Administrative Services Agreement**” means the administrative services agreement dated [■], 2017 between the Financing Entity and the Administrative Agent concerning the reimbursement of certain costs incurred by the Administrative Agent in connection with the administration of the Financing Entity.]⁶

“**Approved Obligation**” has the meaning ascribed thereto in the Change of Law Protection Agreement.

“**Assumption Agreement**” has the meaning ascribed thereto in Section 6.01.

“**Assumption Closing Date**” has the meaning ascribed thereto in Section 6.03.

“**Beneficiaries**” has the meaning ascribed thereto in the Change of Law Protection Agreement.

“**Breach Event**” has the meaning ascribed thereto in Section 7.01.

“**Business Day**” means (a) any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

“**Capital Account**” has the meaning ascribed to the term “capital account” in the General Regulation.

“**Change of Law Protection Agreement**” means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, the FSM and the Indenture Trustee.

“**Collateral**” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“**Co-Owner Agreement**” means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

⁶ Note: To be confirmed if required.

“Declaration of Trust” means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

“Derivative Agreement” means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

“Disclosure Document” means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

“Election Notice” has the meaning ascribed thereto in Section 6.01.

“Finance Reserve Account” has the meaning ascribed to the term “finance reserve account” in the General Regulation [as of the date of this Agreement].

“Financing Entity” means [■], a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

“Financing Entity Trustee” means, at any time, the Person who is, in accordance with the Declaration of Trust, the trustee of the Financing Entity at such time.

“Financing Plan” has the meaning ascribed thereto in the Act.

“Forecast” has the meaning ascribed thereto in Section 4.01(c).

“FSM” has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

“Funding Obligation” has the meaning ascribed to the term “funding obligation” in the Act.

“General Regulation” means O. Reg. 206/17 made under the Act.

“Governing Document” has the meaning ascribed to the term “governing document” in the General Regulation.

“Governmental Authority” means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

“IESO” has the meaning ascribed thereto in the Act.

“Indenture Trustee” has the meaning ascribed thereto in the Change of Law Protection Agreement.

“Initial Forecast” has the meaning ascribed thereto in Section 4.01(b).

“Initial Forecast Period” has the meaning ascribed thereto in Section 4.01(b).

“Investment Interest” has the meaning ascribed to the term “investment interest” in the Act.

“Legislature” means the Legislature of the Province of Ontario.

“Lien” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“Limited Guarantee” has the meaning ascribed thereto in the Change of Law Protection Agreement.

“Management Agreement” means the management agreement dated [■], 2017 between the Manager and the Financing Entity.]

“Manager” means OPG, in its capacity as manager of the Financing Entity under the Management Agreement.]⁷

“Master Transfer and Servicing Agreement” means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, and acknowledged and accepted by the Indenture Trustee.

“Obligations Secured” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“OPG” has the meaning ascribed thereto in the first paragraph of this Agreement.

“Person” means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

“Primary Obligations” has the meaning ascribed thereto in the Change of Law Protection Agreement.

“Process Certificate” has the meaning ascribed thereto in Section 3.01.

“Program Agreements” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

⁷Note: To be confirmed if required. Also note that the draft Trust Indenture refers to OPG as the “manager” (rather than “Financial Services Manager” as under the Act). To be reconciled.

“Proposed Assumption Date” has the meaning ascribed thereto in Section 6.01.

“Protection Agreement Maximum” means the dollar amount determined by the Province and of which OPG is provided written notice in accordance with Article IV.

“Protection Event” has the meaning ascribed thereto in the Change of Law Protection Agreement.

“Province” has the meaning ascribed thereto in the first paragraph of this Agreement.

“Rating Agency” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“Repayment” has the meaning ascribed thereto in the General Regulation.

“Security Interest” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“Specified Creditors” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“Supplemental Reserve Account” has the meaning ascribed thereto in the Trust Indenture as of the date of this Agreement or hereafter as may be confirmed by notice in writing from the Province to the Indenture Trustee.

“this Agreement” means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

“Transaction Document” means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement, the Administrative Services Agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement between the Financing Entity and the IESO; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected,

including any other agreement under which the Financing Entity incurs a material financial obligation or that affects the Province's subrogation rights and/or subrogee interests, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

“Trust Indenture” means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017, as amended, supplemented, restated or otherwise modified from time to time.

EXHIBIT A
FORM OF ELECTION NOTICE

(form of Assumption Agreement to be attached, once settled)

IESO

Draft new \$2B Credit facility agreement for the OFA to lend funds to IESO for FHP purposes.

- new \$2 billion OIC In place July 1/17.
- Directive from the Minister of Finance, both necessary for the OFA to lend funds to IESO under the new Credit Facility.
- OFA will not retain any of the spread of 25bps. It will go to the Province against IOD.

\$975M CF

Extended 3 yrs from Dec 31, 2016 to Dec 31, 2019. Now being amended to :

- Reduce CF from \$975M to \$475M.
- Permit drawings 5 days to 95 days (now 28d-95d).
- Change Use of proceeds proposed by IESO from only for liquidity purposes and to temporarily fund corporate requirements to use advances for purposes for which it is authorized to borrow. May want to narrow to S/T financing req'ts due to cash flow timing differences due to OFHP.
- Interest charge Ont. Cost of funds + 25bps.
- [Early August deadline.](#)

Background (from OIC memo):

IESO has requested that the OFA provide a revolving credit facility of \$2.0 billion to support its role in the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

Under the *Ontario Fair Hydro Plan Act, 2017*, the IESO will incur a monthly funding shortfall in the early years of the plan, as a portion of the Global Adjustment charge to ratepayers will be deferred to the future. During this period, Global Adjustment amounts collected from ratepayers will be insufficient to fund the IESO's contractual obligations to electricity producers and service providers. The *Ontario Fair Hydro Plan Act, 2017* gives the IESO the right to recover those deferred amounts from specified consumers in the future (the "regulatory asset") and the ability to sell the regulatory asset to a financing entity. It is anticipated that the regulatory asset would be purchased by the financing entity to be established by OPG ("OPG SPV"), an OPG special purpose vehicle or trust. The cash received from selling the regulatory asset would be used by the IESO to fund the current Global Adjustment shortfall.

There is expected to be initial and ongoing IESO cash flow requirement timing differences. The OPG SPV is not anticipated to be established and able to borrow to finance the purchase of the regulatory asset from the IESO until later in 2017 (planned for later in summer 2017; however, exact timing is subject to actual implementation). Even once the SPV is set up to borrow, there is expected to be timing differences between the IESO's monthly settlement process when it has to pay generators and when the SPV purchases the asset from IESO. Also, under the proposed legislation, OPG's SPV is not required to purchase any portion of the regulatory asset.

As a result, IESO requires short-term financing to be in place for initial and expected monthly timing differences, or in the event that the OPG SPV, at any time, does not purchase a portion of the regulatory asset.

The OFA obtains the funding it needs to carry out its lending programs by borrowing from the Province. This proposed OIC authorizes the Minister of Finance to lend up to an additional Canadian \$2.0 billion to the OFA. In addition, in order for the OFA to provide the IESO its requested credit facility, a direction from the Minister of Finance to the OFA under CIPA will also be required, which the OFA will seek following an approval of the OIC.

OEFC -- IESO CREDIT FACILITY AGREEMENT & THE PERMITTED LIENS

ISSUE

The IESO has requested OEFC to reopen the existing credit facility agreement between OEFC and IESO to make amendment to the definition of the permitted liens.

CONTEXT

To support IESO's role in the implementation and participation under the *Ontario Fair Hydro Plan Act, 2017* ("OFHP Act"), OFA recently amended the credit facility agreement between OFA and the IESO. One of the amendments to the agreement is to amend the definition of the permitted liens to include any lien arising from the IESO's role and obligations under the OFHP.

The OFA credit facility agreement was amended due to additional roles IESO is taking on under Ontario's Fair Hydro Plan. To fulfil its obligation, the IESO will need a general grant of security on any lien arising from the IESO's role and obligations under the OFHP. Therefore, the OFA credit facility agreement was amended to allow for such a general grant of security.

For the same reason, the IESO has requested OEFC to reopen the existing credit facility agreement between OEFC and IESO to make the similar amendment. Specifically, adding a clause in the OEFC credit facility agreement that any lien related to OFHP will not be viewed as negative pledge by OEFC, so those liens can be used to secure the performance of IESO's obligations to OEFC.

RECOMMENDATION

- To maintain a consistent approach with IESO's credit facilities, CEFD staff and IESO are of the view that the existing OEFC credit facility should amend the permitted liens and negative covenant language to make it the same as, or very similar to, the language in the two OFA Agreements that were signed recently.
- Although the OEFC credit facility is not used for OFHP's purpose, such change to the permitted liens is still required in order for IESO to meet its role and obligation under the OFHP Act.

BACKGROUND

- Currently, under the existing credit facility agreement between OEFC and the IESO, the definition of the "permitted liens" does not include any lien arising from the IESO's role and obligations under the OFHP, including with respect to any amount received or receivable by the IESO (such as, without limitation, amounts received or receivable in respect of the Clean Energy Adjustment), or any other lien, whether arising from the action or inaction of IESO, that is created in connection with the OFHP.
- On November 6, 2017, OFA and IESO signed an updated OFA IESO credit facility agreement with respect to changes related to OFHP. Below are the related changes made to the OFA credit facility:

Excerpt from the executed OFA IESO Amending Agreement #10:

The definition of "Permitted Liens" is amended by deleting the word "and" at the end of subsection (i); replacing the "." at the end of subsection (j) and replacing it with "; and" ; and adding the following subsection (k):

"(k) any Lien arising from the IESO's role and obligations under the OFHP, including with respect to any amount received or receivable by the IESO (such as, without limitation, amounts received or receivable in respect of the Clean Energy Adjustment), or any other lien, whether arising from the action or inaction of IESO, that is created in connection with the OFHP."

Electricity Finance Branch / Corporate and Electricity Finance Division / Ontario Financing Authority
November 08, 2017

OEFC -- IESO CREDIT FACILITY AGREEMENT & THE PERMITTED LIENS

ISSUE

The Independent Electricity System Operator ("IESO") has requested that OEFC amend the existing credit facility agreements between OEFC and IESO (for \$160M and \$120M) to address the additional obligations IESO is taking on under Ontario's Fair Hydro Plan. IESO has indicated that OEFC credit facilities will not be used for Ontario Fair Hydro Plan (FHP) purposes.

CONTEXT - IESO'S REQUEST

- The FHP requires the IESO and Ontario Power Generation (OPG) to work together to refinance Ontario's clean energy investments over a longer period of time. IESO and OPG are in a discussion to grant a security/priority interest on IESO's assets to OPG Trust for the period of the first 4 years of the GA deferral.
- The IESO is planning to seek its Board's approval on Nov 22, 2017 ~~to enter into a for the~~ security agreement ~~with OPG Trust. The security agreement is currently in draft form.~~ Without amending the existing OEFC \$160M and \$120M credit facility agreements (the "OEFC Agreements"), IESO could potentially be considered to be in default of the terms of the ~~security~~ agreements. IESO staff wrote:

"...it likely is best to add to the definition of "Permitted Liens" in the two OEFC facilities to address a) IESO granting security to the OPG Trust during the first 4 years of fair hydro program and b) the possibility that the Clean Energy Adjustment funds collected by IESO might be considered to be subject to a lien. The IESO does not want to be inadvertently in default."

- In order to address this issue, the IESO has requested to amend the definition of the "permitted liens" in both existing OEFC Agreements to include any liens related to the FHP. Specifically, adding a clause in the existing OEFC Agreements that any lien related to OFHP will not be viewed as negative pledge by OEFC, so those liens can be used to secure the performance of IESO's obligations to OPG under the FHP. This would allow IESO to grant security to the OPG Trust during the first 4 years of implementing the GA deferral and also avoid ~~of~~ breaching the terms of existing agreements.
- To support IESO's role in the implementation and participation under the Ontario Fair Hydro Plan Act, 2017 ("OFHP Act"), in July 2017, the IESO had requested ~~that~~ the OFA ~~to make the same similar request changes~~ to the credit facility agreements with OFA in October.
 - On November 6, 2017, the OFA amended the \$475M facility to amend the definition of ~~the~~ "permitted liens" and also included same for the new \$2B credit facility agreement between OFA and the IESO, as requested by the IESO.

CONSIDERATIONS

- ~~OFA's Capital Markets Operations staff have commented that the legislation governing OEFC, the Electricity Act, 1998, may provide differing context from the OFA's objects and mandate under the Capital Investment Plan Act, 1993.~~ [This was a bullet suggested by CMD – Operations.]
- With the ~~proposed~~ new security agreement between OPG Trust and IESO, OPG Trust would have a priority claim against potentially the Clean Energy Adjustment funds collected by or flowing ~~ingn~~ through the IESO, the OEFC could find itself unable to collect payments due from the IESO. The likelihood of this scenario could be assessed as low and IESO is an agency of the government consolidated line-by-line in the Province's accounts. [This was a bullet inserted by CMD – Operations.]

Commented [JK1]: Unless Documentation can provide specific differences that are significant, I suggest we delete.

Commented [OK2R1]: The fact that OFA's objects/mandate are detailed under CIPA is a distinct differentiation from OEFC. This is relevant as it goes to the reach of OFA, which OEFC does not share.

- The OFA agreed to IESO's requested changes to included the requested changes in the OFA credit facilities, OFA'S Capital Markets— Operations staff have commented that the legislation governing OEFC, the Electricity Act, 1998, may provide differing context from the OFA's objects and mandate under the Capital Investment Plan Act, 1993, and any changes to the OEFC agreements should take this into account, providing a precedent of having considered the changes/inclusion of the same request. Treating the current request differently by seeking either a Minister's directive or not granting the IESO its request would mean having to take steps on the OFA credit facilities which were either signed recently or amended recently.

Commented [JK3]: Unless Documentation can provide specific differences that are significant, I suggest we delete.

Commented [OK4R3]: The fact that OFA's objects/mandate are detailed under CIPA is a distinct differentiation from OEFC. This is only relevant as it goes to the reach of OFA. Not fussed if you wish to delete.

Commented [OK5]: The OFA and OEFC are different corporate entities, so treatment of each may be different depending on the circumstances, even when dealing with the same borrower.

Commented [OK6]: The OFA credit facility was provided pursuant to the minister's directive, so seeking a minister's directive wrt OEFC would be consistent with how OFA was treated. Not suggesting this is necessary.

RECOMMENDATIONS

- In order to support IESO's request in relation to its obligation with respect to FHP remain consistent with the language recently incorporated in existing IESO-OFA agreements, OFA staff are of the view that the existing OEFC Agreements can be amended to include liens related to FHP under the definition of the "permitted liens". [TBD]

BACKGROUND

- In order to support IESO's role with the implementation of the OFHP Act, OFA staff made similar changes to the definition of 'permitted liens' in existing OFA-IESO credit facility agreements on November 6, 2017.
- Currently, under the existing credit facility agreements between OEFC and the IESO, the definition of "permitted liens" does not include any lien arising from the IESO's role and obligations under the OFHP, including with respect to any amount received or receivable by the IESO (such as, without limitation, amounts received or receivable in respect of the Clean Energy Adjustment), or any other lien, whether arising from the action or inaction of IESO, that is created in connection with the OFHP.

Electricity Finance Branch / Corporate and Electricity Finance Division &
Capital Markets Operations, Capital Markets Division
Ontario Financing Authority
November 15, 2017

Commented [JK7]: There have been some changes since last week so put CMD – Operations in square brackets.

OEFC -- IESO CREDIT FACILITY AGREEMENT & THE PERMITTED LIENS

The Independent Electricity System Operator ("IESO") has requested that OEFC amend the existing credit facility agreements between OEFC and IESO (for \$160M and \$120M) to address the additional obligations IESO is taking on under Ontario's Fair Hydro Plan. IESO has indicated that OEFC credit facilities will not be used for Ontario Fair Hydro Plan (FHP) purposes.

IESO'S REQUEST

- Under the FHP, the IESO and Ontario Power Generation (OPG) are interacting to refinance a portion of the Global Adjustment over a longer period of time.
- IESO and OPG are in a discussion to grant a security/priority interest on IESO's assets to OPG Trust for the period of the first 4 years of the GA deferral.
- The IESO is planning to seek its Board's approval on Nov 22, 2017 to enter into a security agreement with OPG Trust. The security agreement is currently in draft form. Without amending the existing OEFC \$160M and \$120M credit facility agreements (the "OEFC Agreements"), IESO could potentially be considered to be in default of the terms of the various agreements. IESO staff wrote:

"...it likely is best to add to the definition of "Permitted Liens" in the two OEFC facilities to address a) IESO granting security to the OPG Trust during the first 4 years of fair hydro program and b) the possibility that the Clean Energy Adjustment funds collected by IESO might be considered to be subject to a lien. The IESO does not want to be inadvertently in default."

- The IESO provided a draft Security Agreement, dated November 7th, 2017, between them and the OPG Trust to OFA. According to the draft Security Agreement, in the unlikely event that the IESO runs into a financial difficulty, the IESO would give OPG Trust a priority in the IESO's assets, including all accounts of the IESO and all cash and proceeds from LDCs, that would put OPG Trust ahead of unsecured creditors, including the OFA and the OEFC.
 - o The security agreement is not limited to the Clean Energy Adjustment funds collected by the IESO only.
- In order to address this issue, the IESO has requested to amend the definition of the "permitted liens" in both existing OEFC Agreements to include any liens related to the FHP. Specifically, adding a clause in the existing OEFC Agreements that any lien related to OFHP will not be viewed as negative pledge by OEFC, so those liens can be used to secure the performance of IESO's obligations to OPG under the FHP. This would allow IESO to grant security to the OPG Trust during the first 4 years of implementing the GA deferral and also avoid breaching the terms of the existing agreements with OEFC.
- To support IESO's role in the implementation and participation under the Ontario Fair Hydro Plan Act, 2017 ("OFHP Act"), in July 2017 the IESO had requested that the OFA make similar changes to the credit facility agreements with OFA in October.
 - o On November 6, 2017, the OFA amended the \$475M facility to amend the definition of "permitted liens" and also included same for the new \$2B credit facility agreement between OFA and the IESO, as requested by the IESO.

Commented [JK1]: Opal, pls. confirm that this is the purpose of the "Permitted Liens" section of the credit agreement. This is more Documentation expertise.

CONSIDERATIONS

- -With the proposed new security agreement between OPG Trust and the IESO, OPG Trust would have a priority claim against potentially the Clean Energy Adjustment funds collected by or flowing through the IESO's assets, the OEFC could find itself unable to collect payments due from the IESO. The likelihood of this scenario could be assessed as low.

COMMERCIALLY SENSITIVE AND CONFIDENTIAL ADVICE

- o The extent of this risk is uncertain at this time, given that the regulations that determine the Fair Allocation Amount payable in each period, and how that relates to the obligations to the Financing Entity are still under development.
- IESO is an agency of the government consolidated line-by-line in the Province's accounts.
- The OFA agreed to IESO's requested changes to the OFA credit facilities.
- OFA's Capital Markets Operations staff have commented that the legislation governing OEFC, the Electricity Act, 1998, may provide differing context from the OFA's objects and mandate under the Capital Investment Plan Act, 1993- and any changes to the OEFC agreements should take this into account.
- According to the Minister's Directives associated with the OEFC Agreements, it states that the loan and the credit facilities are "subject to such other terms as OEFC deems appropriate the terms set out in the OEFC Agreements. Therefore, this is not seen as a change to the directives, and new directives from the Minister of Finance are not deemed necessary. This was consistent with the approach when amending the existing OFA-IESO credit facility agreements on November 6, 2017.

Commented [JK2]: I believe amending the OFA agreements were done under this view. Pls. correct if not the case.

RECOMMENDATIONS

- In order to support IESO's request in relation to its obligation with respect to FHP, OFA staff are of the view that the existing OEFC Agreements can be amended to include liens related to FHP under the definition of the "permitted liens".

BACKGROUND

- In order to support IESO's role with the implementation of the OFHP Act, OFA staff made similar changes to the definition of 'permitted liens' in existing OFA-IESO credit facility agreements on November 6, 2017.
- Currently, under the existing credit facility agreements between OEFC and the IESO, the definition of "permitted liens" does not include any lien arising from the IESO's role and obligations under the OFHP, including with respect to any amount received or receivable by the IESO (such as, without limitation, amounts received or receivable in respect of the Clean Energy Adjustment), or any other lien, whether arising from the action or inaction of IESO, that is created in connection with the OFHP.

Electricity Finance Branch / Corporate and Electricity Finance Division &
Capital Markets Operations, Capital Markets Division
Ontario Financing Authority
November 21~~0~~, 2017

Ontario Financing Authority

1 Dundas Street West
Suite 1400
Toronto ON M7A 1Y7

(416) 325-8000

Office ontarien de financement

1 rue Dundas ouest
Bureau 1400
Toronto ON M7A
1Y7



November 6, 2017

Mr. Steen Hume
Assistant Deputy Minister, Ministry of Energy
7th Flr, 77 Grenville St
Toronto, ON M7A 2C1

Ms. Kimberly Marshall
Vice-President, Corporate Services and Chief Financial Officer, IESO
120 Adelaide St W #1600
Toronto, ON M5H 1T1

Dear Mr. Steen Hume and Ms. Kimberly Marshall:

I am writing in relation to the Independent Electricity System Operator's ("IESO") request to the Ontario Financing Authority ("OFA") for a new revolving credit facility in an amount of up to CAD \$2 billion (the "New Credit Facility") to support the IESO's role in the implementation of and participation under the *Ontario Fair Hydro Plan Act, 2017*. Under the OFA Lending Policy, the OFA requires an intercept provision in respect of loans made by the OFA to public bodies on an unsecured basis. In general, an intercept provision allows the Minister of Finance to deduct from money appropriated by the Legislature for payment to the public body amounts equal to any amounts the public body fails to pay the OFA under a loan agreement.

The IESO and the Ministry of Energy ("ENERGY") confirm and the OFA acknowledges that at this time there are no amounts appropriated by the Legislature for payment to the IESO by ENERGY and the intent of such intercept provision is that it would apply if and when amounts were to be appropriated for payment by ENERGY to the IESO in the future.

Prior to entering into a loan agreement with the IESO for the New Credit Facility (the "OFHP Credit Facility Agreement") on an unsecured basis, the OFA requires ENERGY and the IESO to agree to the terms and conditions set out below in relation to the above OFA Lending Policy intercept provision requirement.

These terms and conditions shall also apply to the IESO's existing \$975 million credit facility, established in a credit agreement entered into between the OFA and the Ontario Power Authority dated January 1, 2005, as amended (the "Original Credit Facility Agreement").

- The OFA, the IESO, and ENERGY agree as follows in respect of any advances made by the OFA to the IESO pursuant to the OFHP Credit Facility Agreement or the Original Credit Facility Agreement (each a “Loan Agreement”; together, the “Loan Agreements”):
 - Pursuant to section 23 of the *Capital Investment Plan Act, 1993*, the IESO and ENERGY agree that, in the event that the Legislature appropriates any funds for payment by ENERGY to the IESO for any purpose (“Appropriated Funds”), the Minister of Finance would be entitled to deduct from such Appropriated Funds amounts equal to any amounts that the IESO fails to pay to the OFA on account of indebtedness under a Loan Agreement (the “intercept provision”). Terms relating to the intercept provision shall also be separately included in the Loan Agreements.
 - If the intercept provision is exercised, the IESO agrees that any notice from the OFA to the Minister of Finance in relation to its failure to make a payment that is due under a Loan Agreement may be relied upon by the Minister of Finance without further inquiry or verification by the Minister of Finance.
 - Prior to recommending to the Minister of Finance that the intercept provision be exercised, the OFA will raise the issue with ENERGY and seek ENERGY’s support in getting the IESO to pay the amounts owing to OFA within a reasonable cure period.
 - Upon receipt of notice from the OFA that the IESO has failed to make one or more payments owing to it in accordance with the provisions of a Loan Agreement, ENERGY will provide the OFA with all information requested by the OFA respecting amounts appropriated by the Legislature for payments to the IESO by ENERGY, including the intended purpose and expected timing of such payments to be made by ENERGY. Upon request, ENERGY will provide similar information to the Minister of Finance.
 - ENERGY acknowledges and agrees that, upon receipt of a direction from the Minister of Finance that an amount is to be deducted from money appropriated by the Legislature for payment by ENERGY to the IESO, ENERGY will take all necessary action required by it in order to effect such deduction and payment to the OFA in accordance with the Minister of Finance’s direction.
 - For further certainty, the OFA and ENERGY acknowledge and agree that the intercept provision as provided for herein, and this letter agreement generally, shall not apply with respect to any funds appropriated by the Legislature for payment to the IESO through ministries other than ENERGY or through Ontario Climate Change Solutions Deployment Corporation.

Steen Hume
Kimberly Marshall
Page 3

This letter agreement may be executed in counterparts. Therefore, if you are in agreement with the above terms and conditions in relation to the Loan Agreements, kindly sign this letter agreement below in triplicate and send back two copies to my attention.

Sincerely,



Ronald Kwan

Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA

c. Gadi Mayman, Chief Executive Officer, OFA

.....

The undersigned hereby agree to the terms and conditions as set out in this letter agreement and have executed this letter agreement as of the date first noted above.

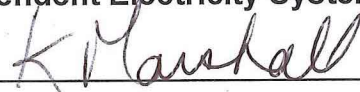
Ministry of Energy

by: 

name: Steen Hume

title: Assistant Deputy Minister, Ministry of Energy

Independent Electricity System Operator

by: 

name: Kimberly Marshall

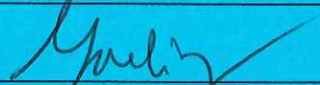
title: Vice-President, Corporate Services and Chief Financial Officer, IESO

General Information

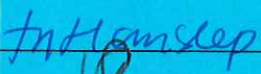
Item IESO FAP Credit Facility		Deputy Minister's Office Contact (Last Name, First Name) Tekle, Jonathan
Division Corporate and Electricity Finance		Branch Electricity Finance Branch
Date Prepared (yyyy/mm/dd) 2017/06/27		Prepared By (Last Name, First Name) He, Gavin
Minister's Approval Required ☒ Yes ☐ No	Date Approval Required (yyyy/mm/dd)	Return To (Last Name, First Name) He, Gavin

Description
The IESO has requested a revolving credit facility from the OFA to support its role in the implementation and participation of the Ontario Fair Hydro Plan.

Standard Approval

Title	Name (Last Name, First Name)	Signature	Date (yyyy/mm/dd)
Manager	Amara, Bruno		2017/06/27
Director	Kim, John		2017/06/28
Assistant Deputy Minister	Kwan, Rosalyn		2017/06/28
Chief Executive Officer	Murphy, Gordo		2017/06/29
Associate Deputy Minister			
Deputy Minister			

Supplemental Approvals

Area	Name (Last Name, First Name)	Signature	Date (yyyy/mm/dd)
Corporate Services FIN	Hanstap, Malle		2017/06/28
Legal Services OFA	Sten, Lisa		2017/06/28
Communication Services			

Comments

Deputy Minister's Office Tracking

File Name	File Location
-----------	---------------

Key Words

DIRECTIVE
MINISTER OF FINANCE
INDEPENDENT ELECTRICITY SYSTEM OPERATOR CREDIT FACILITY

To: Ontario Financing Authority ("OFA")

Whereas:

Under the *Capital Investment Plan Act, 1993* ("CIPA"), the OFA provides financing to public bodies as directed by the Minister of Finance.

The Independent Electricity System Operator ("IESO"), a public body for the purposes of CIPA, has requested funding from the OFA to support the IESO's role in the implementation and administration of the *Ontario Fair Hydro Plan Act, 2017* (the "OFHP").

In order to fulfil the Province's commitments under the OFHP, it is desirable for the Minister of Finance to provide direction to the OFA to provide a revolving credit facility for the purposes of providing short to medium term financing related to the OFHP.

Therefore:

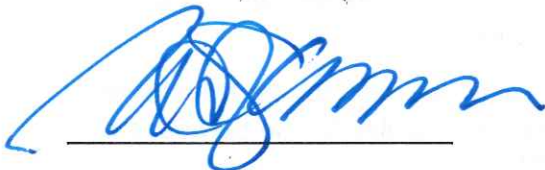
Pursuant to sub-section 16(2) of CIPA, the OFA is directed to lend to the IESO under a revolving credit facility (the "Line of Credit") for the purpose of short to medium term financing related to the IESO's implementation of the OFHP, an aggregate principal amount of up to CAD \$2 billion.

The Line of Credit shall be subject to the following terms:

- The Line of Credit shall be evidenced by an agreement between the IESO and the OFA containing terms and conditions consistent with this Directive (the "Credit Agreement").
- Interest on the Line of Credit shall be payable at a rate equal to the Province's cost of funds based on the terms of the Credit Agreement, and as determined by the Chief Executive Officer of the OFA or the Assistant Deputy Minister, Corporate and Electricity Finance Division, OFA, or a person designated by either of them, plus a twenty-five (25) basis point spread.

- All amounts outstanding under the Line of Credit shall be repaid in full on or before the date no later than September 30, 2022.
- The Line of Credit shall be subject to such other terms as the OFA deems appropriate from time to time.

Dated: JUN 29 2017



Charles Sousa
Minister of Finance

Outstanding Business Issues – Ontario Fair Hydro Plan
Briefing Note

PURPOSE

Provide an overview of a few of the key remaining outstanding business issues that OPG and the Province are working through

BUSINESS ISSUES

1. Provincial Support Agreement Term Sheet (~~Service and~~ Performance and Payment Guarantees)

- As part of the OFHP, the IESO will create and sell a regulatory asset to the OPG financing entity
- In order to provide assurances to those with claims against the Financing Entity (eg. Holders of debt), and support credit ratings, the Province is providing both a Service Guarantee and a Performance Guarantee to ensure that the obligations of the IESO are carried out including obligations related to collecting and remitting clean energy adjustments.
- **Next Steps:**
 - OPG and OFA are working towards the development of a term sheet
 - Timing: Guarantees are required to support rating agency review which is expected by the end of July

2. **Payments in Lieu of Taxes (PILs) Exemption**

- The Province would like to minimize to the extent possible, the PILs payable by the OPG financing vehicle, as those costs will be recovered from ratepayers
- The Province is considering regulation changes to exempt the income arising as a consequence of the Fair Hydro Plan from PILs
- As part of the OFHP, the financing entity will raise debt and acquire “investment assets” from the IESO. Given the unique nature of the investment assets, there are no specific rules which govern the manner which investment assets should be treated for tax purposes, and further analysis is required to ensure the cost of the investment assets are appropriately recognized as a deduction or offset in computing the income of the financing entity
- **Next Steps:**
 - o The Ministries of Finance, OFA and OPG are working together to determine required regulation changes
 - o Timing: [Next steps for a decision / when is a decision required / when would these regulation changes occur]

3. Fair Hydro Plan - Master Subscription Agreement Term Sheet (Equity Injection Process)

- OPG will require equity injections on a monthly basis in order to maintain its capital structure, and will require flexibility in order to issue shares as needed by the Province
- The Ministry of Energy received appropriation for \$1.1B through PRRT to support equity injections for the 2017-18 period, and will continue to provide multi-year forecasts each year through PRRT
- **Next Steps:**
 - o The Ministry of Energy, OFA and OPG are working through the short term mechanics of this process which will ultimately feed into a Master Subscription Agreement. A draft term sheet is underway.
 - o Timing: OPG will require the ability to issue equity in July, so mechanics and agreements should be finalized in June

4. Management Fees

- OPG will be providing all required services to the Trust as part of the OFHP, including planning, strategy, financing, deal execution etc.
- The legislation allows OPG to establish and charge a management fee for those services in accordance with the regulations which are currently in development
- OPG and OEB are currently working together on a management fee structure that balances the interests of minimizing costs and satisfying accounting consolidation requirements
- **Next Steps:**
 - o OPG and OEB will bring forward a recommended framework for developing management fees
 - o Timing: For incorporation into regulations being brought forward in June

5. IESO – Increased Credit Facilities

- The OPG financing entity has the right to purchase the regulatory asset from IESO but does not have to purchase it.
- IESO is working with the OFA to increase the credit facilities in the event that the OPG financing entity does not purchase the regulatory asset
- **Next Steps:**
 - o OFA is drafting a new agreement for a \$2 billion credit facility for the OFA to lend funds to IESO for FHP purposes. Concurrently, the OFA is seeking LRC approval for a new \$2 billion OIC, as well as a Directive from the Minister of Finance, which are both necessary for the OFA to lend funds to IESO under the new Credit Facility.
 - o Timing: The OIC is scheduled as item for the June 27, 2017 LRC meeting. The Directive and Credit Facility Agreement are currently being drafted, to be in place by July 1st, 2017.....

November 21/17

My understanding:

OPGT is making sure that in the unlikely event the FHP doesn't generate funds after 2021 that it will be made whole. Important that all funds receivable to IESO provides a security interest to OPGT. Seems to come down to a CEFD policy decision regarding whether OEFC should grant priority to IESO under the OEFC credit facility agreements.

Toby:

We have reviewed the Nov. 7 draft of the Security Agreement, and I have discussed the issues with our outside counsel.

The Nov. 7 draft updated the terms of the Security Agreement such that they have a broader application than the earlier draft that we had based our previous discussions on. The earlier draft had carved out appropriations from the collateral.

However, in both instances the collateral includes all accounts of the IESO (other than the Appropriations amounts in the earlier draft), all cash and proceeds from LDCs.

To the extent that the amounts owed by the IESO to the Financing Entity are matched by actual proceeds to the IESO from ratepayers that flow through the LDCs on account of a Clean Energy Adjustment, the security interest would only give the Financing Entity an ability to attach to an amount of collateral that would be equal to that cash that is available from the amounts that the LDCs have charged to ratepayers.

However, there is a risk that the Clean Energy Adjustments would not be sufficient to pay the amount owing by the IESO to the Financing Entity in general or in any one period. In such an instance, the security interest would give the Financing Entity a priority in the IESO's assets that would put them ahead of unsecured creditors, including the OFA and the OEFC. We are not sure what the extent of this risk is because we have not seen the final draft of the regulations that determine how much is payable in each period, and how that relates to the obligations to the Financing Entity.

Energy Legal will have the draft regulations, and I think it may have been approved yesterday at LRC (though not made by the LG yet), but I will have to ask them to interpret the regulation for me. It is a complex issue, and I am not familiar enough with the entire scheme to be able to interpret that Reg without more time to review it in conjunction with the entire legislative and regulatory scheme.

I will reach out again to see if I can get any guidance from them, but this may be a case where we will not be able to be satisfied with our understanding of how the Security Agreement interacts with the regulations, and the decision may have to be made without that understanding.

All monies from LDCs get caught. Fair hydro comes before unsec. Creditors. LDCs back up one another. OPGT could Enforce security interest, if IESO can't pay.

Before November 21/17

CEFD to OFA legal:

We touched based with IESO and they told us that the OEFC agreements do not contemplate a general grant of security by IESO over its assets as is currently under discussion with the OPG Trust relative to the implementation of the OFHP. The changes required to allow for such a grant would be to amend the

permitted liens and negative covenant language in the OEFC agreements so as to make it the same as, or very similar to, the language in the two OFA Agreements that were signed recently.

IESO to OFA:

Amendments to the existing IESO-OEFC credit facilities.

It likely is best to add to the definition of "Permitted Liens" in the two OEFC facilities to address a) IESO granting security to the OPG Trust during the first 4 years of fair hydro program and b) the possibility that the Clean Energy Adjustment funds collected by IESO might be considered to be subject to a lien. The IESO does not want to be inadvertently in default.

There are no expected changes being asked to the existing agreement's key business content (e.g. amounts, dates, interest, notices etc.), rather given that IESO-OFA have just finished two new agreements pertaining to the new fair hydro program, ...I suggest we just copy and paste the salient sections from these agreements that would now be relevant to the OEFC agreements for fair hydro namely;

1.DRAFT

The definition of "Permitted Liens" is amended by deleting the word "and" at the end of subsection (xx); replacing the "." at the end of subsection (xx) and replacing it with "; and" ; and adding the following subsection (xx):

"(xx) any Lien arising from the IESO's role and obligations under the OFHP, including with respect to any amount received or receivable by the IESO (such as, without limitation, amounts received or receivable in respect of the Clean Energy Adjustment), or any other lien, whether arising from the action or inaction of IESO, that is created in connection with the OFHP."

The OFA agreements had required an intercept provision, ...but does not apply to OEFC.

From: John Kim []
To: Sarah Harris [Sarah.Harris@ofina.on.ca]
CC: Ken Kandeepan [Ken.Kandeepan@ofina.on.ca]; Mike Manning [Mike.Manning@ofina.on.ca]; Opal Kandelas [Opal.Kandelas@ofina.on.ca]; William Tan [William.Tan@ofina.on.ca]; Gavin He [Gavin.He@ofina.on.ca]; Shajee Kathirgamanathan [Shajee.Kathirgamanathan@ofina.on.ca]
Subject: RE: IESO/OFA - FH line
Date: Wednesday, September 19, 2018 13:59:14

Ok, thanks....Shajee or Gavin will give him a call as well.

From: Sarah Harris
Sent: Wednesday, September 19, 2018 1:58 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO/OFA - FH line

Thanks, John. As Anthony is asking if he should set up a call, I will refer him to you directly so he can arrange a time that is convenient to you both.

Sarah

From: John Kim
Sent: Wednesday, September 19, 2018 1:53 PM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Shajee Kathirgamanathan <Shajee.Kathirgamanathan@ofina.on.ca>
Subject: RE: IESO/OFA - FH line

Sure, we will have that discussion with him. If he calls, pls. refer him to us.

From: Sarah Harris
Sent: Wednesday, September 19, 2018 1:52 PM
To: John Kim <John.Kim@ofina.on.ca>
Cc: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Opal Kandelas <Opal.Kandelas@ofina.on.ca>; William Tan <William.Tan@ofina.on.ca>
Subject: FW: IESO/OFA - FH line

Hi John,

Anthony at IESO has approached us to begin discussions on an increase to the \$2B cap to the FHP. Is this a discussion that you would initially be having with IESO?

Thanks,
Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, September 19, 2018 12:56 PM
To: Sarah Harris <Sarah.Harris@ofina.on.ca>
Cc: William Tan <William.Tan@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>
Subject: RE: IESO/OFA - FH line

We need to begin discussions in Oct 2018 on making an amendment to increase the \$2B cap.

The FH Trust did not purchase this month's variance and I have no further info on if or when a purchase will occur.

IESO will be at \$1.175B drawn this month.

Should I set up time to talk?

From: Sarah Harris [<mailto:Sarah.Harris@ofina.on.ca>]
Sent: August 29, 2018 10:59 AM
To: Anthony Martinello
Cc: William Tan
Subject: RE: IESO/OFA - FH line

CAUTION: This email originated from outside of the organization. Exercise caution when clicking on links or opening attachments even if you recognize the sender.

Thank you, Anthony, for the head's up. I will communicate your message internally.

Thanks,
Sarah

From: Anthony Martinello [<mailto:Anthony.Martinello@ieso.ca>]
Sent: Wednesday, August 29, 2018 8:49 AM
To: William Tan <William.Tan@ofina.on.ca>
Cc: Olga Whiteley <Olga.Whiteley@ieso.ca>; Lisa Stein <Lisa.Stein@ofina.on.ca>; Victor Buza <Victor.Buza@ieso.ca>; Sarah Harris <Sarah.Harris@ofina.on.ca>
Subject: IESO/OFA - FH line

Will

Just a courtesy email ...nothing to do yet.

The IESO:OFA Fair Hydro line of credit is at about \$1 billion drawn out of the \$2 billion max capacity. We are drawing on avg about \$200-300million/month.

The Fair Hydro Trust has not purchased the IESO's reg asset for a few months....if this continues I will be coming back to OFA to seek to increase the line of credit.

Regards.

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